

**DOCUMENTARY STAMP TAXATION
IN FLORIDA
and
INSURANCE TAXATION IN FLORIDA**

by

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**PREPARED BY THE RESEARCH STAFF OF THE FLORIDA
CITIZENS TAX COUNCIL FOR CONSIDERATION BY
THE COUNCIL AND THE PUBLIC**

Florida Citizens Tax Council
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Tallahassee, Florida
February 1957

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These interim studies were prepared by the research staff of the Florida Citizens Tax Council to acquaint the Tax Council, the members of the Legislature and other officials, and the public with the factual findings and suggested possible improvements regarding documentary stamp taxes and insurance taxation in Florida.

The Florida Citizens Tax Council has not analyzed or evaluated the factual findings; nor has it either endorsed or rejected any of the recommendations contained herein. This publication, therefore, is not to be taken as the report or recommendation of the Tax Council. These and other research studies are being made available to obtain the views and suggestions of officials and citizens in order that the Tax Council may benefit from the judgment of informed readers before rendering its report to the Governor and to the 1957 Legislature.

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EDITORIAL INTRODUCTION

The research staff of the Florida Citizens Tax Council is making available to the Council and the public a series of studies analyzing individual Florida taxes or examining the tax system as a whole. Pursuant to the direction of the 1955 Legislature establishing the Tax Council, both the state and local aspects of Florida taxation are subject to investigation. So wide a scope for study makes the issuance of a series of reports preferable to a single voluminous compendium.

Although many of the reports are being issued directly under the auspices of the Florida Citizens Tax Council, several important studies of the series will be published by the Bureau of Government Research and Service, School of Public Administration, Florida State University. The Tax Council has contracted with that institution to undertake the research and accompanying publication for studies of property assessed valuation and related subjects that are part of the Tax Council's research program.

Following the issuance of the research reports, the Florida Citizens Tax Council will conduct hearings and submit a report of findings and recommendations to the Governor and the 1957 Legislature.

Wylie Kilpatrick, Executive Secretary
Florida Citizens Tax Council

DOCUMENTARY STAMP TAXATION IN FLORIDA

Introduction

When, in 1765, the British imposed the Stamp Act upon the American colonies, opposition to the tax was so great that repeal followed the very next year. The "Sons of Liberty" violated the law by using unstamped paper; the more conservative citizens simply boycotted business and legal transactions requiring the tax. Their objections, however, were against that particular situation: that law, from that source, at that time. They did not oppose stamp taxes as such.

Although the Stamp Act of 1765 was short-lived, other stamp tax laws were enacted by American legislatures following the Revolution. The federal government today issues several different kinds of stamps for payment of taxes.¹ Stamp taxes in various forms are currently levied in 16 states, including Florida.

Florida's documentary stamp tax, officially an excise tax on documents, was first levied in 1931.² It is one of the state's major taxes, producing a revenue of over \$6 million per year at the present time, and ranking eleventh in size among Florida's taxes.

The basic rate imposed by the tax is ten cents on each \$100 represented by the paper taxed or ten cents on each paper. The details of the law, including its growth through amendment, are described below.

Also considered in the following pages are the administrative provisions governing the collection of the tax, the revenue produced during the last 10 years, and the nature of comparable laws in other states. By way of conclusion, all of this is summarized and some drastic changes are proposed.

Coverage of the Tax

Basic coverage.—The documentary stamp tax in Florida may properly be regarded as seven separate levies. Tax stamps must be affixed to each of the following kinds of written instruments:

¹See especially Ch. 11, Internal Revenue Code, U.S.C., Tit. 26, §§ 1800-1838.

²Fla. Laws, ch. 15787; Ch. 201 F.S.

The 1931 law was approved July 28, and remained unchanged until 1937. In that year an amendment provided for an exception to the general coverage of the act. In 1939 the 1937 amendment was repealed and re-enacted with a second exemption. Fla. Laws, chs. 17890 & 19068; §§ 201.09 & 201.10 F.S. Penalties for misuse of the first of these exemptions were incorporated in both laws of amendment. §§ 201.19 & 201.20 F.S.

In 1953 there was another change, largely administrative in nature, stipulating a special method of tax payment in certain cases. Fla. Laws, ch. 28216; subsection 201.08(2), F.S. Again in 1955 a new amendment exempted certain previously taxed instruments. Fla. Laws, ch. 29981, § 201.21 F.S.

- (1) Deeds or other writings whereby realty is conveyed or vested
- (2) Transfers of shares or certificates of stock
- (3) Original issues, including reorganizations, of stock
- (4) Bonds, debentures, certificates of indebtedness, or other instruments with interest coupons, with some exceptions
- (5) Promissory notes, non-negotiable notes, written obligations to pay money, and assignment of salaries, wages, or other compensation, excluding identical renewals
- (6) Powers of attorney
- (7) Proxies of certain stockholders.³

The first five of these, the ones dealing with financial documents, are taxed generally at the rate of 10 cents for each \$100 or fraction thereof (ie., at 0.1 per cent, with the tax payment rounded off to the next highest dime). In the case of stock without par or face value, the tax on transfers is simply 10 cents per share, and in the event of an original issue of stock without face value the regular tax rate is applied to the actual value unless that actual value is less than \$100, in which case the tax is again simply ten cents per share.

Also taxed at the flat rate of 10 cents each are the last two documents listed, namely, powers of attorney and certain proxies.

Technically speaking, the documentary excise taxes are levied directly on the several instruments involved. As the Comptroller's explanation of this point states: ". . . the law does not specify who shall pay it but requires it to be paid. Usually, parties agree who shall pay the tax."

Exemptions.—Several exemptions from the basic coverage of the documentary excise tax are set forth in the law and its amendments. Rulings of the Attorney General have placed further limitations on the tax, for example with respect to governmental instruments:

All notes, bonds, mortgages, deeds and other evidences of indebtedness issued, sold, transferred, assigned or delivered by any state, county or subdivision thereof, or municipality, all being governmental agencies, are exempt from the documentary stamp tax. This also applies, of course, to such documents and instruments issued by the federal government and its agencies.

The tax on bonds and related documents is further limited if the property described in the instrument or obligation is located

³In the order listed: §§ 201.02, 201.04, 201.05, 201.07, 201.08(1), 201.03 & 201.06 F.S.

partially in another state. Then the tax is only upon that part of the value of the bonds which corresponds to the proportion which the property located in Florida bears to the total property described.

The sub-section relating to promissory notes involved in "retail charge account services," although apparently only an administrative provision, actually allows many technical exceptions to the general law.⁴ This provision was enacted at the instigation of banks operating a "central charge plan" for retail sales in Dade and Leon Counties. These banks, and any others which might subsequently perform the same function, are authorized to pay on their total charge account claims (the gross amount of the indebtedness), and stamps need not be affixed to each separate promissory note (charge slip). The law permits the Comptroller to prescribe a special form of payment without any stamps, but in practice the banks buy stamps and affix them to their books quarterly. Thus all of the notes involved are taxed at 0.1 per cent of their face value, and notes for small amounts need not have the minimum size (10 cents) stamp affixed separately.⁵ Despite this "exception" for individual "Bill the Bank" transactions, the total stamp tax revenue of the state is increased by the central charge plan. Retail charge accounts handled by individual stores are not considered taxable, and neither the merchant (creditor) nor the customer (debtor) purchases any tax stamps. Under the central charge plan, the customer signs a written obligation to pay and the bank (creditor) purchases the requisite stamps.

A clearer exemption is more precisely stipulated in the case of the renewal of a promissory note. When the renewal "only extends or continues the identical contractual obligations . . . without enlargement in any way . . .," the note is not taxed if it has attached to it the original note with the proper cancelled stamps affixed. This exemption was one of the two incorporated in the 1939 amendment, having been carried over from the 1937 law.⁶

The other 1939 change exempted from the tax "all certificates of deposit issued by any bank, banking association, or trust company . . ."

Finally in 1955, certain promissory notes secured by collateral obligations on which the stamp tax had been paid were freed from this excise. The exemption is extended to promissory notes, non-negotiable notes, and other written obligations to pay money when the maker shall deposit the tax-paid collateral with the

⁴Subsection 201.08(2), F.S.

⁵The central charge plan could not work if the bank received only five per cent as its service charge while having to pay a minimum of ten cents tax on each note, since many of the items are less than \$2.00.

⁶Fla. Laws, chs. 17890 & 19068; § 201.09 F.S.

⁷Fla. Laws, ch. 19068; § 201.10 F.S.

holder "pursuant to any agreement commonly known as a wholesale warehouse mortgage agreement."⁸ The phrase "commonly known" is something of a joke since there has been a considerable exchange of legal opinion on the meaning of "wholesale warehouse mortgage agreement."⁹

Interpretations.—A fairly extensive body of interpretations of these requirements and exemptions, based largely on the holdings of the Attorney General and partly on court decisions, has been built up over the years. Both the court decisions and the opinions of the Attorney General have been restated and compiled by the Comptroller and published in booklet form (1952). The Comptroller said at the time of publication of this handbook that the rulings set forth were official and:

They are based on Attorney General's opinions of long standing. Many sessions of the Legislature have intervened since they were promulgated. They have been uniformly enforced. They are binding on all persons who may be liable for the payment of the documentary stamp tax.

Even so, a serious amount of ambiguity remains in the law. New interpretations, even of the original provisions of the act, are still being issued. The fact that most of these interpretations are expressed dogmatically, as if no disagreement concerning their validity is possible, is somewhat off-set by the fact that they tend to contradict each other, sometimes within relatively short periods of time.¹⁰

Then again, interpretations of considerable age may be set aside. A recent court decision overturned a Comptroller's ruling of about 20 years' standing.¹¹

As will be seen from the discussion of administrative procedures which follows, several people must interpret this law. Besides the taxpayer, various officials must decide whether or not particular written instruments are subject to the tax. The complexity of the law and the resultant confusion over its interpretation create a situation which cries for reform. The head of the Documentary Stamp Tax Department, in the Comptroller's office, is especially anxious to see the law clarified and the objects of taxation more precisely identified.¹²

⁸Fla. Laws, ch. 29981; § 201.21 F.S.

⁹See Atty. Gen. Op. No. 055-233 (Sep. 8, 1955) and No. 055-287 (Oct. 31, 1955).

¹⁰For example, contrast Atty. Gen. Ops. cited *supra*.

¹¹Culbreath v. Reid, 65 So 2nd 556.

¹²Various violations of the stamp act are labeled misdemeanors and are punishable as such. In some cases the tax law prescribes punishment, stipulating a \$500 fine or 12 months imprisonment in one instance (§ 201.18 F.S.) and the same fine or six months in the county jail in another (§ 201.20 F.S.).

As an additional punishment in case of fraudulent attachment of notes to a purported renewal (which would be tax free), the law provides for a forfeiture of twice the face value of all the notes involved (§ 201.19 F.S.). There has probably been no criminal action taken under any of these provisions; at least, no appeal from a criminal trial has been brought before the Florida Supreme Court.

Administrative Provisions

The administration of the documentary stamp tax is a responsibility of the Comptroller.¹³ He is directed to furnish stamps and to provide the method for their use.¹⁴ In addition to this state office, all of the clerks of the circuit court play a major role in policing the tax. Their responsibility is considered below.

Within the Comptroller's office is a Documentary Stamp Tax Department with a part-time Director and 16 other positions (six of which are organized as a branch office in Miami). In addition to these employees, 102 stamp agents located in every county of the state except Wakulla, sell the stamps to the taxpayers. They receive 2 per cent of the value of the stamps that they sell. Of these agents, 65 are county clerks (excepting Wakulla and Calhoun Counties) and 37 are private financial institutions.

The cost of collecting the documentary stamp tax, in addition to the 2 per cent allowed the stamp agents, can only be approximated at this time because of the recent separation of the work of the Stamp Tax Department from the work on small-loan-company licensing. Excluding the cost of office space in Tallahassee, which is not charged to the department, the state office expenses for collecting the documentary stamp tax are slightly over \$100,000. With the 2 per cent allowed to the stamp agents, the tax is, therefore, collected for about 3 per cent of its gross collections.

No central record is kept of the revenue derived from each of the seven taxes listed in section 2 above. The only break-down possible or envisaged by law today is the location by the county and the office making the sale. The collections of stamp agents, of inspectors, and of the state office through cash sales are known and recorded. It should be borne in mind, though, that stamps are not necessarily used where they are purchased.

The procedure in the state office is quite direct. The Comptroller first appoints a stamp agent, as a rule the Clerk of the Circuit Court. If the agent desires to act on a cash basis, all stamps are paid for at time they are ordered. Generally, however, the agents work on a consignment basis, the amount to be determined by the Comptroller. A surety bond (paid for by the department) is required by the Comptroller to cover the stamp agent for the full amount of his consignment account. When he orders a replacement for his consignment account, he encloses his remittance in payment of the stamps ordered. The state office keeps a current balance of all stamps on hand and on consignment accounts. Sales of stamps for cash and consignment sales are balanced with the amount of cash received.

¹³§ 201.11 F.S.

¹⁴§§ 201.13 and 201.14 F.S.

Special forms are furnished by the Comptroller to the clerks of the circuit court on which the clerks may report the recordation of instruments that they believe to be taxable, but on which the proper amount of tax has not been paid. These reports are required by law, but payment of the tax is not a prerequisite to the filing of documents.¹⁵

The clerks may submit their reports to the state office, to a field inspector, or (for five counties) to the Miami area office. Reports sent to the state office are examined by the Director and assigned to the proper inspector whenever some tax should be collected.

The state office maintains the same attitude towards cases which are brought to its attention by the clerks as it does towards instances uncovered initially by an inspector himself. That is to say, the field inspectors, as part of the departmental staff, assume the full responsibility, subject to normal supervision by the director.

The field inspectors report to the state office any failure to collect a tax on an instrument that has been determined to be taxable. In these cases a file is kept on the subject; and if collection cannot be made by correspondence, a tax warrant is issued. A tax warrant is prepared by the documentary stamp tax department and sent to the Comptroller for his signature. The Comptroller's legal office handles this procedure, turning the warrant over to the Attorney General for further action. This procedure is rarely employed, although several tax warrants might be issued in any given year. Remaining disagreements are settled through litigation.¹⁶

Once a case has been closed, either through the collection of the tax or some determination that no tax is due, the file is stored under the name of the party involved rather than in a separate file of contested cases. Thus a record is not readily accessible of those instances in which the field inspectors have had trouble and have had to call upon the state office, or of those in which the state office has had correspondence or in which tax warrants have been issued.

Moving from state administrative procedures to the county clerk's office, the process is again fairly direct, although not very informative. No record is kept of the various kinds of instruments taxed. Many of the stamps are used on deeds and other papers recorded in the clerk's office. Other stamps are used on documents outside the clerk's office and the clerk has no record of

¹⁵§ 201.12 F.S.

¹⁶Thus the following people are all involved in interpreting this law: taxpayers, Clerks of the Circuit Court, field inspectors, officials in the Comptroller's office, the Attorney General, and the courts.

them. Where, and for what purpose, a stamp is used is, in fact, none of the clerk's business and he makes no effort to pry into the matter.

Thus the question of which tax is being paid with a stamp that has been sold, and even the location of the taxable instrument, is one that is left to the various taxpayers. Nobody knows who they are. Neither the Legislature nor the Comptroller has asked for this information and neither the subordinate administrators nor the stamp agents have provided it.

Collections

The state as a whole.—All revenue derived from the stamp tax goes to the General Revenue Fund.¹⁷ The collections since 1946 have more than quadrupled, as indicated in Table 1. Not only have gross collections gone up markedly, they have advanced faster than the population increase. While the revenue quadrupled, population did not double. The per capita collections, as noted in Table 1, have, therefore, nearly tripled during the same period.

TABLE 1.—DOCUMENTARY STAMP COLLECTIONS IN FLORIDA:
FISCAL YEARS 1946-1956

Year	Amount	Per Capita	Year	Amount	Per Capita
1946	\$1,552,050	\$.63	1952	\$ 3,465,833	\$1.19
1947	1,997,422	.82	1953	3,969,159	1.28
1948	2,177,230	.86	1954	4,227,220	1.26
1949	2,122,883	.82	1955	5,622,829	1.59
1950	2,559,719	.96	1956	6,767,144	1.83
1951	3,216,307	1.15	11-year total	37,677,796	.....

Source: Reports of the State Comptroller for respective years.

Rising collections are to be expected in a growing state. Increased per capita collections, however, raise new questions and call for further explanation. Insofar as stamp tax sales are related to economic activity, high revenue figures may indicate prosperity. During "good times" the Legislature may well want the people of Florida to pay a higher average stamp tax, particularly if nonresidents are contributing heavily to the tax payments.

Because both the taxpayers of the past and those of the present remain unknown, for reasons noted above, accounting for the increase in per capita collections presents a most difficult problem. More taxable instruments are having more stamps affixed to them, both at a faster rate than the population growth. So much is certain. Contributing factors are considered below as a part of the brief treatment given the tax base.

Analysis by counties.—The yearly gross totals may be analyzed under three headings, according to who sells the stamps, for each

¹⁷§ 201.15 F.S.

of the sixty-seven counties. Small out-of-state collections are excluded from this phase of the analysis. A few illustrative counties are listed in Table 2, showing how collections are made.

TABLE 2.—SELECTED COUNTY ILLUSTRATIONS OF DOCUMENTARY STAMP TAX COLLECTIONS, BY COLLECTING OFFICE: 1948 AND 1955

County and Fiscal Year		Total State Collections	Collections of Stamp Agents	Collections of Stamp Inspectors	State Cash Sales
Calhoun	1948	\$ 1,030	\$ 960	\$ 70	\$
Collier	1955	16,799	16,799	.....	.....
Dade	1955	1,653,716	863,500	789,060	1,156
Hardee	1948	2,580	525	190	1,865
Hendry	1955	3,739	1,192	20	2,527
Hernando	1955	5,550	5,550	.....	.....
Jackson	1948	6,171	3,900	2,271	.....
Wakulla	1955	6	.....	.....	6

Normally the stamp agents collect most, if not all, of the tax (as in Calhoun and Collier Counties in Table 2). Stamp inspectors collect a significant sum in most, but not all, counties (as in Jackson and Dade, but not in Hernando). State cash sales are attributed to the several counties in varying degrees of importance. During recent years somewhat more than half the counties have had state cash sales allotted to them in amounts ranging from a token size to figures larger than the sales of the stamp agents and inspectors combined (as in Hardee, Hendry, and Wakulla Counties in Table 2). The out-of-state collections during the nine years from 1948 through 1956 ranged from a low of \$12,560 to a high of \$36,639. Even the high figure represents only a small part of the state total (0.5 per cent in 1956).

Although studying all of the figures for all of the counties since the stamp tax was first enacted is not necessary, a record is desirable of the largest, average, median, and smallest counties (in terms of stamp sales) for the fiscal years 1948-1955. This appears in Table 3.

TABLE 3.—DOCUMENTARY STAMP TAX COLLECTIONS OF SELECTED COUNTIES: 1948-1955
(County size and rank determined by stamp sales)

Fiscal Year	Largest (Dade) Sales	Average County			Median County		Smallest County	
		County	Rank	Sales	County	Sales	County	Sales
1948	\$ 655,359	Leon	11	\$35,055	Walton	\$3,853	Wakulla	\$
1949	614,946	Alachua	12	28,365	Walton	3,698	Wakulla	12
1950	733,727	Leon	11	45,031	Okaloosa	4,534	Wakulla	9
1951	897,494	Sarasota	12	45,089	Collier	5,802	Wakulla	42
1952	943,038	Sarasota	12	52,835	Collier	6,846	Wakulla	82
1953	1,119,017	Leon	12	66,367	Suwannee	8,031	Wakulla	.....
1954	1,209,412	Sarasota	12	67,183	Ocala	6,609	Liberty	110
1955	1,653,716	Leon	12	88,489	Columbia	9,284	Wakulla	6

Although some consistency appears in the position of a county compared to other counties in stamp tax collections from year to

year, a great deal of variety also is evident. Dade County is big enough to rank first in every year, accounting for between 27 and 31 per cent of the total sales. In each of the eight years from 1948 through 1955, Dade had more than twice the volume of Duval County, which was second in every year. Leon County ranked 11th or 12th in each of the eight years; Santa Rosa has varied between 35th and 40th during the same period; and for the last seven of these years, Washington County was either 54th, 55th, or 56th. In contrast to these steady counties have been those like Collier, which moved from 45th in 1948 to 28th in 1955, and Dixie, which jumped from a typical ranking of 64th in 1951, to 37th in 1952, and back to 65th in 1953.

Stamp tax collections related to wealth and population. —

Some, but not much, additional light is shed upon the stamp tax by seeing the relationship between stamp sales, population, and personal income on a county-by-county basis. For a state-wide survey, however, this information may be more readily digested in summary fashion. Table 4, therefore, presents data for those counties which have the highest, first-quartile, median, and lowest rankings (first, seventeenth, thirty-fourth, and sixty-seventh) according to any one of the four rankings indicated.

TABLE 4.—GROSS AND PROPORTIONAL DOCUMENTARY STAMP TAX COLLECTIONS AND RANKINGS, BY SELECTED COUNTIES, ACCORDING TO POPULATION AND PERSONAL INCOME: 1955

County	1954 Pop. Rank	Collection		Per Capita Collections		Collections per \$1,000 of Personal Income	
		Gross	Rank	Amount	Rank	Amount	Rank
Broward	8	\$ 489,392	3	\$3.24	1	\$2.21	1
Columbia	31	9,285	34	.47	40*	.47	40
Dade	1	1,653,716	1	2.57	2	1.28	5*
Flagler	61	2,873	53	.68	34*	.52	36
Glades	67	428	65	.18	63	.13	65*
Hillsborough	3	422,781	4	1.35	14	.94	17
Lake	17	52,768	15	1.18	17	.80	21
Lee	24	49,328	17	1.64	9	1.23	7
Osceola	39	8,400	36	.68	34*	.76	25
Putnam	26	19,126	27	.69	33	.62	34
Wakulla	59	6	67	**	67	**	67
Walton	34	6,466	40	.44	43	.71	31

*Tie in rank order.

**Less than .01.

Of the four sets of rankings indicated (population, gross sales, per capita sales, and sales per thousand dollars of personal income), two pairs emerge as correlated. The population and gross sales rankings are roughly correlated, with several counties, including Dade, having the same place on both scales.

Likewise associated are the two rankings based on collections, one in proportion to personal income and the other per capita. That is to say that generally a county that ranks high according to per capita stamp sales also ranks high according to sales or every dollar of personal income in the county. Broward County is a perfect illustration of this point.

Per capita sales and population rankings are not significantly correlated, with many exceptions such as the counties of Charlotte (high per capita sales, low population) and Jackson (low per capita sales, relatively high population). Several of the counties in Table 4 illustrate wide divergence in this respect.

Table 5 groups the counties together according to the level of personal income per capita. In the broadest outline, this table suggests that the richer counties sell more stamps per dollar of personal income within the county and more stamps per capita. Such a generalization breaks down not only in the case of individual counties, but also with respect to these income groups. In the group of eight counties in the \$900 to \$1,100 class, for example, more stamps per dollar of income are sold than in the group of 14 counties in the \$1,100 to \$1,300 class. Therefore, only a general impression remains that size and wealth go together with high stamp tax collections (in the gross, per capita, and per dollar of income).

The geography of stamp sales suggests another interesting, but indecisive, point which may be derived from the county-by-county figures. Fifteen counties rank both in the first quartile of the 67 counties arranged according to per capita collections and also in the first quartile according to collections per dollar of personal income. Of these 15 counties, 12 are located in a giant geographic horseshoe along the Florida coast, from Indian River County on the east around to Hillsborough and Pinellas Counties on the west. Within this geographic area, the only counties excluded from the first quartile ranking are St. Lucie County (which ranks 18th on both scales, barely out of the first quartile) and Monroe County (which assumes a different character than its neighbors in large measure because of the military element of its population). The other three first quartile counties are Orange (which in many respects is much like the coastal counties), Volusia (which is separated from the others in the horseshoe only by Brevard), and Leon (which gets the state capital business and probably also most of the Wakulla County stamp sales).

Thirteen counties are in the fourth quartile on both scales. These are somewhat more scattered, although most are in north or west Florida.

The tax base.—The county-by-county analysis reveals neither the identity of the taxpayers nor the sources from which the revenue is derived. From the terms of the law itself, that is from the listing of the seven separate taxes, the levy appears to

TABLE 5.—ANALYSIS OF DOCUMENTARY STAMP TAX COLLECTIONS BY COUNTIES GROUPED
ACCORDING TO LEVEL OF COUNTY PERSONAL INCOME PER CAPITA: 1955

Level of County Personal Income Per Capita	Number of Counties	Personal Income (thousands)	Population of Group	Stamp Sales			
				Gross	Average of counties in group	Per \$1,000 personal income	Per capita
Florida*	67	\$5,312,847	3,526,983	\$5,622,829	\$ 83,923	\$1.06	\$1.59
Over \$1,800	2	1,306,388	648,139	1,657,455	828,728	1.27	2.56
\$1,500-\$1,800	5	1,515,158	902,635	1,518,883	303,777	1.00	1.68
1,300-1,500	16	1,591,200	1,114,810	1,789,264	111,829	1.12	1.60
1,100-1,300	14	529,402	435,003	374,790	26,771	.71	.86
900-1,100	8	220,917	216,718	183,108	22,888	.83	.84
700-900	13	104,644	127,960	48,054	3,696	.46	.38
500-700	9	45,138	71,655	17,339	1,926	.38	.24

* Differs from 67-county total because the population includes inmates of three state institutions and stamp sales include out-of-state stamp sales.

be largely exacted from financial transactions, including real estate deals. The various components of the tax revenue, however, cannot be separated. The contributing elements suggested by the preceding consideration include wealth, urbanization, warm coastal climate, population, and a generally expanding economy. Some of these correlations are doubtless coincidental; other unmentioned factors may have a greater effect than those that have been listed. A review of all apparently relevant considerations might help to reveal the approximate distribution of the documentary stamp tax load among the various sources being tapped.

If the tax were collected with perfect uniformity, an approach to the tax base would be possible by starting with the taxable instruments and working backwards to the taxes that should be paid. (This would be like calculating a poll tax from census figures instead of from revenue records). Thus in 1955, credit unions in Florida loaned about \$25 million. Presumably, stamps worth more than \$25,000 were purchased to affix to these notes. The small loan companies loaned over \$118 million in loans of \$300 or less. A corresponding \$118,000 should have been collected by the state.¹⁸

Although some calculations might result in assigning some of the stamp tax collections to various sources, other important sources would remain hidden.

The records of 67 county clerks could hardly be searched page by page to add up the stamps affixed on recorded instruments. Actual bank loans (excluding renewals and wholesale warehouse mortgage agreements) would be most difficult to ascertain on the basis of current reports. Nor is any way available to determine how many powers of attorney and proxies are executed with stamps affixed. (Certainly more are executed than are taxed.) A state-wide total of documentary stamp tax collections on stock issues and transfers would also be hard to determine.

The approach to the tax from the taxable instruments is further rendered virtually impossible because of the very complicated and extensive interpretations of the stamp act. Even in actual practice, the applicability of the law is difficult to ascertain in a great many cases. To attempt to compute the state-wide tax on the basis of all pertinent instruments without including extraneous documents would be a futile effort. Errors of exclusion and inclusion would both be too numerous to make the results reliable.

Thus no positive conclusions may be reached with respect to the documentary stamp tax base. The several stamp taxes combined in this one chapter of the statutes produce a significant and

¹⁸These calculations could be approximations at best. Loans under \$100 are taxed at 10 cents or more than 0.1 per cent. Renewals, on the other hand, are tax exempt.

important revenue for the state. But no one in the state knows now how much each of these taxes taken separately produces and, therefore, no one knows who bears this particular tax load. If the Legislature or the taxpayers of Florida want to know more about the documentary stamp taxes, records will have to be kept for each of the seven levies separately. Before recommending such an improvement in the stamp act, attention may now be paid to the experience of other states.

Comparison of Documentary Tax Laws of Other States

Rates in other states.—Just as Florida's excise tax on documents presents a confusing picture, so do the corresponding laws of some other states. Different research sources, therefore, disagree on which laws are comparable to the stamp tax and how much revenue is derived therefrom. One complicating feature in some states is the role of local governments in sharing the documentary tax revenue. The following treatment, therefore, cannot be considered authoritative on each state mentioned (or omitted), but the general pattern portrayed serves the purpose of a comparative view of Florida's tax.

Table 6 lists the various taxes sometimes included under the heading of stamp or documentary taxes, and shows which states levy these taxes and at what rates. Sixteen states levy some sort of documentary excise tax. Only South Carolina, however, has a pattern that even remotely approaches that of Florida's.

Considering the taxes one by one, Florida's rates may be compared with those of other states, bearing in mind that only Florida levies all seven of these taxes.

On deeds and conveyances, Kentucky is low with a flat one dollar tax. Florida is next; Pennsylvania is high with a straight 1 per cent charge.

Only three states tax stock issues: Alabama is low with 25 cents per \$500, while Florida and South Carolina charge 10 cents per \$100.

For stock transfers, the high rate is New York's 20 cents per \$100. Florida and other states are in the middle with 10 cents per \$100 and Pennsylvania is low at two cents per \$100 with a face value limitation.

The Kentucky tax on powers of attorney is highest, but it is limited to instruments authorizing the conveyance of real or personal property. South Carolina levies a tax five times as great as Florida's flat rate of 10 cents.

Florida taxes all promissory notes at 10 cents per \$100. Kentucky is low, with a tax of \$1 on mortgages only; Oklahoma charges only two cents per \$100 for short term (two years or less) mortgages; and South Carolina levies four cents per \$100

TABLE 6.—STATE DOCUMENTARY RECORDING AND SECURITY TRANSFER TAXES IN THE UNITED STATES: 1956

State	Deeds and conveyances	Stock Issues	Stock Transfers	Powers of Attorney	Promissory Notes or Mortgages Only
Alabama	50c per \$500	25c per \$500 or 25c per share	.....	.....	15c per \$100/ <i>a</i>
Florida/ <i>b</i>	10c per \$100	10c per \$100 or 10c per share	10c per \$100 or 10c per share	10c each	10c per \$100
Kansas	.....	.....	.....	.....	25c per \$100/ <i>a</i>
Kentucky	\$1 each	.....	.....	\$1 each/ <i>c</i>	\$1/ <i>a</i>
Maryland	55c per \$500	.....	.....	.....	55c per \$500
Massachusetts	\$1 for \$100-\$500 55c per additional \$500	.....	(2c per \$100 repeated, 1954)	.....	.....
Minnesota	.....	.....	.....	.....	15c per \$100/ <i>a</i>
Mississippi/ <i>d</i>	.....	.....	.....	.....	.....
New York	.....	.....	1c per \$5 share 2c per \$5-10 share 3c per \$10-20 share 4c per \$20 share or 2c per share	.....	50c per \$100/ <i>a</i>
Oklahoma	.....	.....	.....	.....	10c per \$100 5 yrs. 8c per \$100 4 yrs. 6c per \$100 3 yrs. 4c per \$100 2 yrs. 2c per \$100 less than 2 years/ <i>a</i>
Pennsylvania	1%	.....	2c per \$100 but not over 2c per \$100 face value	.....	.....

TABLE 6.—STATE DOCUMENTARY RECORDING AND SECURITY TRANSFER TAXES IN THE UNITED STATES: 1956
(Continued)

State	Deeds and conveyances	Stock Issues	Stock Transfers	Powers of Attorney	Promissory Notes or Mortgages only
South Carolina/ ^b	\$1 per \$100-\$500 \$1 per additional \$500 \$1.50 per \$1,000	10c per \$100	4c per \$100 or 4c per share	50c each	4c per \$100
Tennessee	.....	.....	.....	.....	10c per \$100 over \$2,000/ ^a
Texas	.....	.....	3.3c per \$100 or 3.3c per share	.....	.....
Virginia	15c per \$100	.....	.....	.....	15c per \$100/ ^a
Washington	50c for \$100-\$500 50c per additional \$500	.....	.....	.....	.....

Statutory references: Ala., Code of 1940, Tit. 51 § 618, § 619, § 1, Act 841, Laws, 1953, § 372.
 Fla. State. §§ 201.01-201.08. Kans., Genl. Stat. 1949, § 79-3102. Ky. Rev. Stat. 1955, § 142.010.
 Md., An. Code 1951, Art 81, §§ 273 f. Mass., Genl. Laws 1932, ch. 640 §§ 1-3. Minn. Stat. 1949, § 287.05.
 Miss., Code 1942, Tit. 39, ch. 408, §§ 9701.02 ff. N. Y. Consolidated Laws, ch. 60, §§ 250 ff. and 270 f.
 Okla., Stat. 1951, Tit. 68, §§ 1171-1180. Pa., Purdon's Stat. 1933, §§ 2041. f. Act 467, Laws 1952, §§ 2 f.
 S. C. Code 1952, §§ 65-682 ff. Tenn., Code 1932, § 1248.3, It. S. Tex. Art. XV, ch. 184, Laws 1941, § 1.
 Va., Code 1950, §§ 58-54 ff. Wash., Remington's Rev. Stat., §§ 8370-53—8370.60, 8370-185—8370-210a.
 See also Commerce Clearing House, *State Tax Guide* (loose-leaf, as of Oct. 11, 1956), and Commerce Clearing House, *Tax Systems*, (13th ed., New York: C. C. H., Inc., 1952), pp. 225 f.
^a/Mortgages only.
^b/Florida and South Carolina also levy the following taxes at the indicated rates:

	Bonds		Proxies of Stockholders	
Florida	10c per \$100		10 c each	
South Carolina	10c per \$100		.....	

^c/Power of attorney to convey real or personal property.

^d/On filing and recording an instrument creating, assigning, or transferring a leasehold or mineral or royalty interest in and to any non-producing oil, gas, or other minerals: minimum tax \$1. 3c per acre up to 10 years, 6c per acre 10-20 years, 8c per acre over 20 years.

on all promissory notes. The highest rate on all notes is Maryland's 55 cents per \$500 and the highest on mortgages only is 25 cents per \$100 in Kansas.

Only Florida and South Carolina have a documentary tax on bonds, each levying 10 cents per \$100. In addition, Florida has the unique tax on certain stockholders' proxies, charging 10 cents for each of these.

Since the proportion of revenue derived from each of these seven different Florida taxes is unknown, no over-all comparison of rates is possible. If Florida is high only for unimportant taxes and low for the major ones, then the over-all rate in the state would be lower than if the important sources were highly taxed while the minor ones met only a low tax rate. South Carolina is much higher on deeds and conveyances and on powers of attorney, but much lower on promissory notes and stock transfers (while omitting altogether a tax on proxies).

Collections in other states.—Another interstate comparison is possible. Table 7 shows the actual and per capita revenue derived from document and stock transfer taxes in 13 states. This table is limited to showing the revenue that accrues to the state government itself and so it omits some taxes collected under state law for remission to local governments.¹⁹

TABLE 7.—STATE REVENUE FROM DOCUMENT AND STOCK TRANSFER TAXES IN 13 STATES: 1952 AND 1956

State	1952		1956	
	Amount (thousands)	Per Capita	Amount (thousands)	Per Capita
13-state total	\$39,194	\$.60	\$78,628	\$1.16
Alabama	594	.19	931	.30
Florida	3,466	1.12	6,767	1.84*
Kentucky	567	.19	631	.21
Maryland	1,234	.49	62	.02
Massachusetts	287	.06	1,119	.23
Minnesota	114	.04	218	.07
New York	25,315	1.67	41,579	2.60
Pennsylvania	3,254	.31	20,686	1.90
South Carolina	843	.38	1,126	.49
Tennessee	958	.29	1,320	.39
Texas	202	.02	471	.05
Virginia	1,901	.55	3,058	.85
Washington	495	.20	660	.25

Source: Bureau of the Census, *State Government Finances in 1952* and *State Tax Collections in 1956*.

* Census population estimates were used for all states except Florida for which the estimate of the Bureau of Economic and Business Research, University of Florida, was used.

¹⁹This explains the omission of Kansas, Mississippi, and Oklahoma. For New York, the table shows only the stock transfer tax revenues since New York's mortgage tax proceeds are distributed to the counties.

Not only was the New York per capita revenue the highest of those states using these taxes, but also all of the revenue for that state was derived entirely from the stock transfer tax. The magnitude of New York's collections is explained by the high tax rate (2 mills) and by the tremendous activity of the New York Stock Exchange.

In 1952, Florida ranked second in revenue per capita from documentary taxes. Pennsylvania's realty and stock transfer taxes by 1956 accounted for a larger per capita revenue than did all seven of Florida's taxes on documents.

The disparity between the per capita figures for Florida and South Carolina should be noted in particular because these two states have roughly the same pattern of documentary taxation. Florida's higher rates on stocks and notes would seem to more than off-set South Carolina's higher rates on deeds and powers of attorney. The effect of different volumes of business for each category probably accounts for the difference in per capita revenue. Considering only the 13 states listed in Table 7, Florida's per capita yield from documentary taxes has been high. Florida in 1956 ranked third both in per capita and in total amount of revenue derived from these taxes.

Suggestions for Change

Abolition of the documentary stamp tax.—The most obvious way to clear up the many confusing aspects of Florida's excise tax on documents is to abolish the entire tax. Abolition would end the problem of determining who is now being taxed how much under this statute. Nor would taxpayers and administrators be any longer harassed by the thorny questions of legal interpretation.

Without positive proof on which to base the assertion one may nevertheless observe that the present tax permits evasions and violations of the law. This is the case at least to some extent, with respect to promissory notes, many of which are accepted by merchants in lieu of cash payments or charge account debits, but which are not recorded and not stamped. Many powers of attorney and stockholder proxies likewise escape taxation.²⁰ Despite these and other infringements on the statute, no criminal prosecutions appear to have been made. From this point of view, the tax (like some others levied by the state) is a tax on honesty. Although the loss to the state cannot be accurately measured, the fact that violations are "permitted" is a strong reason to abolish the tax on those who do not take advantage of the "permission." More strict enforcement of the law would be both difficult and onerous, and of doubtful practicality in terms of increased yield.

²⁰See the Appendix to this report, "Excise Tax on Documents," a report by George E. Allen to the State and Local Tax Committee, Tax Section, The Florida Bar (Oct. 15, 1956.)

If the taxes levied under this heading were abolished, the six to seven million dollars of current revenues would either have to be lost or replaced. Replacement would not be difficult.

If the taxes on deeds and mortgages were repealed, the revenue could be more than recouped through a deed recording fee of two mills. The law would have to require a statement of full value on the deeds or conveyances. This would have the advantage of insuring payment of the tax since the fee would be collected before recordation, whereas under the present law, clerks may record taxable instruments to which no stamps have been affixed. The revenue for the state would be increased because all property conveyances would produce two mills, whereas now all of these transactions produce one mill, plus one mill on only that part of the value of the property which is secured by mortgage. This proposed recording fee could be collected without the use of tax stamps.

If the tax on other promissory notes were withdrawn, the revenue could be replaced through an increase in the occupational license of lending agencies. Small loan companies in Florida paid the following amounts in 1955:

Licenses	\$ 165,602
Non-income taxes	260,852
Income taxes	2,370,879
Total taxes	\$ 2,797,333
Advertising	1,189,562
Salaries	6,328,930
Travel	518,884
Other	8,413,539
Total expenses of conducting business	\$19,248,248

These same companies made loans of \$118,888,210, on which about \$118,888 tax must have been paid. If the stamp tax burden was removed, \$200,000 could be derived from licenses without seriously affecting the cost of conducting a small loan business. This would seem to be true also for all other lending agencies. With the tax levied directly on the lending agencies, both the taxpayers and the administrators would escape the current problems of interpretation and subterfuge which seem inextricably interwoven with the stamp tax. Again, the stamps themselves could be abandoned without being missed.

The revenue from powers of attorney is probably so slight that this source could be ignored. The requirement for a stamp on these instruments might properly be called a nuisance tax. Still, a very slight increase in lawyers' occupational licenses, perhaps graduated in terms of number of employees in a firm's office, could replace any loss to the state from the abolition of the stamp tax.

The tax on certain stockholder proxies is probably in much the same class. Even if this tax were uniformly collected on all taxable proxies—even without evasion—this tax would not produce very much revenue. If the return from this source, however small it may be, is considered essential, the Legislature could provide an alternative corporation tax that would keep the state finances from suffering this loss. Florida is the only state attempting to collect this tax.

Taxes on stock issues, stock transfers, and bonds undoubtedly loom large in accounting for the current six or seven million dollars of documentary stamp tax revenue. If the state wants to tax the internal financial affairs of corporations, the Legislature might well do so more directly than through the stamp tax. By adopting a tax immediately placed on corporations, the state would avoid all of the complicated questions of jurisdiction which now confuse the stamp tax. The locus of stock issues and transfers would no longer be a relevant and disturbing issue. If the state is concerned primarily with transfers taking place outside of a corporation, the modest occupational license tax now imposed on brokers might be raised to compensate for the loss of stamp revenue.

For each of the seven stamp taxes, therefore, good reasons call for abolition of the tax. Ready sources of compensatory revenue are available. For all seven taxes combined, abolition would have the further advantage of saving most of the cost of administering the stamp tax. Raising existing taxes would not greatly increase the cost of their administration. Clerks might well be allowed 2 per cent of the new deed filing fee proposed, comparable to the 2 per cent of their stamp sales under the present law, but the other costs of collection could be avoided. The entire appropriation for the Documentary Stamp Tax Department could be saved. Provision could and should be made for the transfer of the few people involved into other state service. The turn-over rate in public employment, including the Comptroller's office, is high enough so that these employees could soon be placed in new positions.

Lesser reforms.—If the basic structure of the stamp act must be kept, certain other improvements would nevertheless be worthwhile. The entire act should be clarified and some of its details changed.²¹ Chief among these changes would be recognition of the seven different taxes levied with provisions for segregating the revenue derived from each. Different stamps for each tax could be provided at minimal additional expense. The present Documentary Stamp Tax Department could administer the act in this way if the law required this reform. Such an improvement in the collection of these taxes would be of great importance with regard to future legislation affecting any one of the various sources now being taxed. Florida is moving into a leading role as a

²¹The legal argument for such a reform is very strong. See the Appendix to this report.

big, prosperous state. This future should not be met with antiquated restrictions on knowledge of revenue sources and with inadequate revenue records. Future legislatures are going to need more information than is currently available if they are going to adjust their taxation program to meet the requirements of the new Florida. The road to this information should be opened up today, and each of the seven stamp taxes should be recorded separately.

Even if the whole documentary stamp tax is not abolished, the nuisance tax on powers of attorney might well be abandoned. If this tax is to be maintained, serious attention should be given to the possibility of raising the rate to make it a worthwhile source of revenue and to justify better enforcement. South Carolina's tax of 50 cents might be adopted, or the Kentucky charge of \$1.00 for certain defined powers of attorney might be employed by Florida.

Florida's unique tax on proxies is probably in the same category as the tax on powers of attorney. Even if the other major parts of the stamp tax are retained, the tax on proxies should be abandoned.

Another South Carolina requirement that might be useful in Florida is the provision that the clerks are not to record taxable instruments unless the stamps have been affixed.²² Under the Florida system, clerks may record unstamped instruments and then they must report this fact to the Comptroller. Although this may be a rare occurrence, the administrative complications brought about in this manner could be avoided for the most part by requiring the payment of the tax prior to recordation of a taxable instrument.

Other changes in the law are possible, but they are more generally subjects of preference or of taxation policy. Florida's one mill rate could be adjusted in either direction, but no particular need is pressing either for increasing or decreasing this levy. If the Legislature knew exactly what the burden was on each category of taxpayers, a basis would exist on which to revise the schedule of rates. Promissory notes might be taxed less; stock transfers might be more heavily taxed. Any change now, however, would be a mere stab in the dark.

Summary

Factual conclusions.—Florida's documentary stamp tax may be summarized under the headings of coverage, administration, collections, source, and comparison with other states.

(1) The present excise tax on documents is, in reality, seven different taxes, all of which are paid by the use of stamps. These

²²Code of Laws, 1952, Tit. 65, § 65-694.

are taxes levied on deeds, stock issues, stock transfers, bonds, promissory notes, powers of attorney, and stockholder proxies.

The chief exemptions are for renewals of promissory notes, centralized retail charge account services, certificates of deposit issued by banks, and wholesale warehouse mortgage agreements. When bonds are issued on out-of-state property, a corresponding portion of the bond is tax exempt.

(2) The Documentary Stamp Tax Department in the Comptroller's office has primary responsibility for the collection of these taxes. Stamp agents, including county clerks and private financial institutions, likewise play a leading role in the administration of the stamp act. The departmental annual budget is in the neighborhood of \$100,000, covering the salaries and expenses of about 16 employees. The stamp agents receive a straight 2 per cent of the value of the stamps which they sell.

At no point in the administration of these seven taxes are they distinguished from each other. The law lumps them all together and the officials involved in the sale of stamps and the enforcement of the law have not voluntarily assumed the additional task of determining the relative importance of each tax.

Enforcement at the present time is through inspection, correspondence, negotiation, and litigation where necessary. Criminal proceedings are unknown. Many taxable instruments are not recorded and are not located in the typical financial institutions. Most of these undoubtedly escape the tax.

The interpretation of the actual coverage of these taxes is a difficult and ever-present task. New rulings replace old ones and new statutes make piecemeal changes requiring fresh interpretation. The need, therefore, is great for clarification of the statute.

(3) Collections under the stamp act amount to a major source of revenue for the state. Collections have grown from \$1,552,050 in 1946 to \$6,767,144 in 1956. At the same time, the share of each person in Florida has gone up from \$0.63 to \$1.83.

(4) The sources of these taxes are obscured because in accounting they are all lumped together. Stockholders and debtors undoubtedly account for the bulk of the revenue, but no precise statement on this point is possible under the present law.

(5) Most other states do not levy any of these seven taxes; no other state levies all seven of them. On both an absolute and a per capita basis, Florida ranks third (following New York and Pennsylvania) in terms of collections for state use.

Florida's rates seem to compare favorably with those of other states. On most of these taxes, the Florida charge of 10 cents per \$100 is higher than some states and lower than others. Only on the powers of attorney does the Florida rate appear out of line, first of all for charging anything, and secondly for charging so little.

Suggestions for improvement.—On the basis of the foregoing findings, the following improvements appear desirable.

(1) Abolish the entire documentary stamp tax, replacing the lost revenue, if necessary, by more direct taxes which could be more easily understood and administered and which would be more equitable in their coverage and enforcement.

If the excise tax on documents is not repealed, other improvements would still be in order.

(2) The entire law should be rewritten in order to clarify it, taking into consideration the extensive body of complicated interpretation that has been built up around the law.

(3) In order to facilitate an understanding of these taxes and their impact on Florida's growing economy, and in order to pave the way for future legislation improving the stamp act, each of the seven different taxes should be separated in accounting from each other. This should be done through the present Documentary Stamp Tax Department.

(4) The nuisance tax on powers of attorney should either be abandoned or raised to a significant level.

(5) The tax on stockholder proxies should also be abolished.

(6) County clerks should not be allowed to record taxable instruments on which no tax has been paid. Stamps should be affixed to the papers before they are recorded.

(7) The various separate rates should be re-examined as soon as possible. The adoption of proposal number three above is a prerequisite for this purpose except in the case of the tax on powers of attorney which might properly be adjusted now.²³

The present documentary stamp tax is a confusing conglomeration of seven distinct taxes which are difficult to interpret and to administer. If this act is not repealed outright, the law should at least be clarified. The people of Florida and future legislatures are entitled to know what the effect of these taxes is and to know who is paying them. Under the present law neither knowledge is possible.

²³See the Appendix to this report for another list of proposed remedies. Compare especially points 4 and 5 above with point 2 of the Appendix remedies, also point 2 above with points 3, 4, and 5 of the Appendix.

APPENDIX

A LEGAL VIEW OF THE DOCUMENTARY STAMP TAX

Excerpts from "Excise Tax on Documents," a report by George E. Allen to the State and Local Tax Committee, Tax Section, The Florida Bar (unpublished, October 15, 1956). Part I of this report describes the law itself. The other two parts are reproduced here, with minor editorial revision.

Part II—Comments

As stated above the law is primarily designed as a revenue measure. In the fiscal year ending June 30, 1955, it produced a tax of \$5,622,829.15 and for the fiscal year ended June 30, 1956, \$6,767,143.75.

There is objection on the part of many to the sections dealing with the tax on deeds and other instruments relating to land. Most of such objections may be classified in two groups. First, those who do not desire to disclose by means of documentary stamps affixed at the time of recording the actual consideration paid or changing hands. The standard approach to this seems to be to record the deed or instrument with a low valuation insofar as state documentary stamps are concerned and subsequently affix the proper stamps by the addition of the necessary amount after such deed has been recorded. The second group of objections would be upon the affixation of full documentary stamps as to the value of property transferred by gift, corporate liquidation, or distribution in kind, deeds or agreements involving deferred payments, deeds from private individuals to states, counties, or municipalities, and deeds from states or municipalities to private individuals as well as instruments conveying only an interest in land such as a crop lien or lease.

The Court in *Metropolis Publishing Company vs. Lee*, 126 Florida 107, 170 So. 442, stated that the chapter should be construed and all doubts and ambiguity resolved in favor of the taxpayers. * * * * The principal causes of litigation have been the determination of exactly what was a taxable transaction and the definition of transactions outside the state of Florida. One of the initial opinions of the Attorney General of September 22, 1931 was that where an entire transaction takes place outside of Florida the stamp tax was not returned, which opinion was later amended on two different occasions to impose the tax on stock certificates where such certificates were brought into the State of Florida for the purpose of transfer upon the records of the corporation. Fine lines of distinction have apparently been drawn by the Attorney General in his interpretation and his opinions are not wholly concurred in by the Supreme Court. For example on July 11, 1956, in a case involving the Peninsular Telephone Company, the Florida Supreme Court stated bonds executed and

delivered in New York by a Florida corporation are not subject to the documentary stamp tax.

Sections relative to a stamp tax imposed upon the original issue or transfer of stock are fairly uniformly enforced. The tax applies to all instruments from the original stock subscription to the final issuance. It does not apply to the issuance of new stock certificates for old, a reissue of stock certificates where there is no change of ownership, of a reissuance as a result of a reduction of par value. However, it does apply to shares of stock issued pursuant to a plan of reorganization.

An opinion of the Attorney General on November 2, 1937 stated that when shares of stock are transferred on the books of a corporation from the name of one to the name of another, a tax must be paid even though the person to whom the transfer was made acquired no beneficial interest in such stock. This opinion is directly contrary to the exemption provided for under the federal documentary stamp tax. One of the original rulings of the Attorney General on September 24, 1931, was to the effect that certificates of stock sold on the New York Stock Exchange or other exchanges outside of the State of Florida where a memorandum of sale is made in Florida would be subject to the documentary stamp tax and where the certificate of stock had a power of attorney on the reverse side thereof such power of attorney would of necessity require a documentary stamp in addition to the stamp for the certificate. The Supreme Court of the United States in *Lee vs. Bickell, et al* 292 US 415, 54 Supreme Court 727, overrode this opinion with a statement that when sales tickets of brokers in Florida ancillary to a transaction consummated in New York are signed and delivered in that state carrying stamps in the amount required by the laws of New York and laws of the United States, they are not subject to taxation under the documentary stamp tax of Florida.

A ruling of the Attorney General on November 3, 1931 to the effect that, where stock is assigned as collateral security and endorsed in blank documentary stamps are required, has been more or less ignored insofar as a survey of banking or lending institutions conducted by this writer are concerned.

The tax provided for upon proxies and powers of attorney is levied on an individual basis. Each proxy and each power of attorney requires an individual 10 cent stamp. Such a tax is difficult to enforce insofar as proxies are concerned since thousands of them are executed each year in Florida by Florida residents and mailed to other states for use. A survey conducted in one stock broker's office of 46 individuals, all of whom own stock and executed proxies, failed to disclose a single individual familiar with this section of the law or who self-assessed the amount of such stamp tax. The tax on powers of attorney, unless involving real property and recorded in the public records, is likewise ignored. Each stock certificate transferred customarily involves the

execution of a stock power affixed to the certificate or separate from it. The same survey indicated no stamps were affixed. Powers of attorney for transfer of automobile titles are regularly accepted by the tax collectors and the State Motor Vehicle Commission without documentary stamps. These two sections of the law are loosely enforced.

No provision is made in the law itself for the filing of reports by the taxpayer in connection with this particular tax and the documentary stamp tax law itself does not contain any provisions relating to the assessment, revision, or appeal of taxes. A general section stating that all revenue laws relating to assessment of taxes are extended to the documentary stamp tax for the purpose of collecting such stamp taxes would appear to be limited to those omitted through mistake or fraud and it would appear that this provision does not operate to the benefit of the taxpayer but simply refers to the state. Section 196.01 of Florida Statutes grants courts of chancery jurisdiction to hear cases involving the legality of any tax, assessment, or toll providing the complainant shall in each case tender to the court the full amount of such tax which he admits to be legal and due by him or file with the complaint a receipt showing payment of the same prior to the institution of the suit. Taxpayers are likewise given the right to refuse an assessment by alleging its illegality and applying to the circuit court to determine such question under Section 69.01 of Florida Statutes. . . .

The principal omission in the documentary stamp tax is that no provision is set out in the law regarding the time when the tax due on the document subject to tax becomes delinquent. Penalties are provided for failure to pay the tax but such penalties are not predicated upon any element of time. As a general rule of law it would be presumed that the nature of the tax would preclude any statutory provision allowing any extension of time for the payment of the tax.

Part II—Remedy

1. It is suggested that provisions be made through an amendment to Section 201.02 to require all instruments relating to lands at the time of recording to reflect on the face the amount of consideration, thus simplifying enforcement and collection of the tax thereon.

2. A further suggestion is that the tax on powers of attorney provided for in Section 201.3. and the tax on proxies provided in Section 201.6 be eliminated from the statutes as impossible of enforcement and of no revenue consequence.

3. A specific provision should be made in the law as to the time when the tax is due and the time when said tax becomes delinquent.

4. The question of whether the law makes the tax a lien upon

the property of the taxpayer should be clarified and provision should be made for refund of tax erroneously paid, as the limitations of Section 215.26 covering repayments of funds paid into the State Treasury through error would appear to be too restricted in scope.

5. A complete review of the court decisions and Comptroller's rulings based upon Attorney General's opinions should be made to eliminate those now obsolete.

INSURANCE TAXATION IN FLORIDA

Introduction

Florida's 2 per cent insurance premium tax is one of the dozen most important revenue producers for the state. Together with other taxes paid by the insurance business, the premium tax is a major source of revenue, although it does not begin to compare with the six biggest taxes levied by the state.

As a business tax, this levy raises a question which is well put by public finance text writers: ". . . is it not better to levy taxes on persons directly rather than indirectly and obscurely through business?"¹ Not only in Florida, however, but throughout the nation, insurance taxes are firmly established. Florida's tax fits into a general pattern which has been summarized in the following words:

The yield in most states is from 2 to 3 per cent of total revenue; in Connecticut, it is almost 6 per cent. Virtually all of this tax would seem to be shifted to purchasers of insurance. Whether it is on balance regressive is difficult to say. Administration of state insurance taxes is relatively easy, and evasion is negligible.²

The following pages present a detailed analysis of the taxation of the insurance business in Florida and compare insurance taxes in Florida and other states generally. Attention is paid to coverage of insurance taxation in Florida, administrative provisions, collections in Florida, comparison of insurance premium taxation in other states, and suggestions for change. All of these are summarized in a conclusion which underlines the main points and the chief recommendations.

The following treatment of insurance taxation is brief rather than exhaustive. Emphasis is given to outlining the general provisions, status, and problems of this type of taxation in Florida. Since no drastic changes in the present law seem to be called for, this examination may be sufficient.

General problems of insurance taxation.³—The taxation of insurance companies in the United States seems to have stemmed not so much from some consideration of the type of business involved as from the discovery of a ready source of revenue and

¹William J. Shultz and C. Lowell Harris, *American Public Finance*, (6th ed., New York: Prentice-Hall, 1954), p. 312.

²The same, p. 335.

³This section is based largely upon a corresponding section in "State Taxes upon Selected Types of Business Enterprises: Insurance Companies," by Leslie E. Carbert, Ch. 7 of *Report of the Senate Interim Committee on State and Local Taxation: Part III, State and Local Taxes in California: A Comparative Analysis* (California Legislature, Regular Session, 1951), pp. 225 ff.

from a desire to bestow a competitive advantage upon "domestic" companies as against "foreign" ones. (In insurance parlance, domestic companies are those chartered and domiciled within the state, foreign ones come from other states, and those from other countries are called alien.) As can be seen from Table 3, discrimination against foreign insurers is still a general characteristic of insurance taxation in this country.

Having decided to tax insurance companies (perhaps exacting higher payments from foreign companies) along with other businesses, the problems of defining a suitable tax base remains. Five possibilities present themselves: the general property tax, the capital stock tax, the income tax, the "restricted" income tax, and premium taxes.

The general property tax is not a proper basis for taxation of insurance companies. Their real property holdings do not bear any substantial relationship to their economic size or taxpaying capacity. Their intangible property is too difficult to locate and assess.

Two major objections to the capital stock tax as a primary source of insurance taxation revenue are, first, that it discriminates unrealistically between stock and mutual companies. This consideration is especially important in the field of life insurance. Secondly, the capital stock tax is practicable only for application to domestically chartered companies. The need to apportion the tax so as to avoid taxing on an interstate basis (which states are forbidden to do) presents a further complication.

The general net income tax can be applied to insurance companies only with great difficulty because of the uneven distribution of losses and expenses over a long period of time. The precise income derived from the insurance aspects of an insurance company's business cannot readily be determined. Any such tax in Florida, furthermore, would require amendment of the state constitution.

Since premium net income cannot be made the basis for taxation, investment income may theoretically be taxed. This has been the basic approach of the federal government. For the states, however, it seems unsuitable. Besides being unconstitutional at present in Florida, the investment income tax ignores important income. The separation of investment income from the strictly insurance side of the business is not easily accomplished. Limitation of investment income to that which is earned under the jurisdiction of the state (a requirement of the constitution in our federal system) would be most difficult. This restricted income tax would also seem to make an unwarranted distinction between different insurance companies performing the same tasks within the state.

On the basis of these considerations, insurance companies might well be left untaxed were it not for the firmly established determi-

nation of states to levy a series of general business taxes. The insurance business has no special status that would justify exempting it from the basic pattern of business taxation. The states have, therefore, turned to the fifth possible basis of insurance taxation—the gross premiums tax.

The gross premiums tax, nevertheless, has its shortcomings too. Such a tax base ignores the important factor of investment income. The out-of-state business must be separated from the domestic business. Insurance companies with the same gross premiums but with varying losses, expenses, and investments pay the same tax. Older, well-established companies have an opportunity to develop a somewhat favored position under the gross premiums tax. On the other hand, this tax is relatively easy to administer and it does bear some relationship to taxpaying ability. At the present time, moreover, the premiums tax has the advantage of wide-spread adoption and traditional acceptance.

Other insurance taxes, many in the form of licenses and fees, are also paid by the insurance business directly. In Florida, as will be seen below, these other taxes account for only a small percentage of the total taxes paid. Indirect taxes and taxes of general applicability (such as the sales tax and corporate charter tax) are also paid by insurers, but these are disregarded in the following analysis.

Coverage of Insurance Taxation in Florida

Early legislation (1913-1925).—The legislative record of insurance taxation in Florida has been one of starts and stops. The original act on this subject was passed in 1913. At first, changes were few and far between.

The 1913 statute⁴ provided for a 2 percent tax on gross premium receipts. This basic figure has remained unchanged throughout the following years, but the method of calculation and the exemptions allowed have been altered several times. Under the first law, fraternal and benevolent associations were the only exceptions.

A schedule of license taxes was also stipulated in the 1913 act. Insurance companies generally paid \$200 annually and plate glass insurance companies paid \$50. In addition, the companies had to pay the licenses for their field representatives. The state fees for these men were set at \$5 for local agents, \$25 for traveling agents or solicitors, \$10 for adjusters, and \$25 for rate-makers or rate agents. This law also provided for local taxes on traveling agents or solicitors of \$5 and on local agents at 50 per cent of the state tax.

The penalty for failure to pay these taxes was very severe: revocation of the certificate of authority to do business. This ulti-

⁴Fla. Laws, ch. 6421, sec. 29.

mate punishment has been retained in the re-enactments of the law and certainly is adequate.

In 1917, domestic mutual fire insurance companies were exempted from the 2 per cent premiums tax.⁵

Eight years later, the license for sick and funeral benefit companies was set at \$100 and other changes were made.⁶ The 2 per cent tax was defined as covering premiums "less return premiums and premiums for reinsurance in companies authorized to transact business in Florida, the tax upon such premiums for reinsurance to be paid by the company or association accepting such reinsurance."

At the same time, the exemption for fraternal or benefit associations was extended to include certain other societies. The tax on agents or solicitors was raised to \$6 for the state and (at 50 per cent) \$3 for local governments. The paragraphs of the original act dealing with travelling agents and rate-makers were dropped. The 1925 law, finally, extended the exemption of domestic mutual fire insurance companies to include all domestic mutual companies.

The middle period (1939-1941).—Three new laws relating to insurance taxation were passed in 1939. The first of these created firemen's relief and pension funds in certain cities and towns.⁷ These municipalities were authorized to tax the gross receipts from fire and tornado insurance premiums on risks within their jurisdiction at the rate of 1 per cent. The taxes paid to the cities and towns under this provision were credited on the state tax due. The total tax imposed on the companies was not thereby raised; but with respect to premium receipts from risks located within a municipality covered by this act, the company divided its tax payment equally between the city or town and the state. The state continued to collect the total tax due, allocating the municipalities' shares to a special Firemen's Relief and Pension Fund for the use of the local relief and pension systems.⁸

The second 1939 change redefined the basis for calculating gross premiums.⁹ Thereafter the tax would be on gross receipts from premiums, omitting premiums on reinsurance accepted and

⁵Fla. Laws, ch. 7274.

⁶Fla. Laws, ch. 10150 (1925).

⁷Fla. Laws, ch. 19112.

⁸This opens the possibility of an anomalous situation. Suppose that a town hired an extraordinarily large number of fire fighters and employed them with great efficiency. The resultant lowered fire danger could produce lower fire insurance rates, lower premium tax receipts, and a smaller relief and pension fund for more employees. In such a case, if the firemen felt that their fund was dangerously low they could let a few fires burn, raise the insurance rate, raise the tax payments, and thereby replenish their fund. No reason exists to expect such behavior.

⁹Fla. Laws, ch. 19501.

less return premiums and cancellations, but without deductions for reinsurance ceded. This reversed the 1925 approach to reinsurance.

A third change in that same year provided for the establishment of limited surety companies.¹⁰ The license tax for these companies was set at \$100 and they were subjected to the 2 per cent premium tax on the same basis as other insurers.

The definition of the basis for calculating the gross premiums tax was redefined again in 1941.¹¹ The new provision stipulated that the state would allow no deductions for moneys paid upon surrender of policies for their cash surrender value, no deductions for discounts or refunds allowed for direct or prompt payment of premiums, and no deductions for dividends paid by the company.

Current coverage (1945-1955).—The year 1945 saw a complete re-enactment of the basic law with several important modifications reversing the trend of the preceding years.¹² The license tax for all insurers, including those previously taxed at lower rates, was set at \$200. The 2 per cent tax was again levied on gross receipts from premiums, omitting premiums for reinsurance accepted, and less return premiums. No deductions were authorized for reinsurance ceded, surrender of policies for cash value, discounts for prompt payments, or dividends paid. Consideration for annuity policies were taxed at one-half of 1 per cent for the first year under the new law and at 1 per cent thereafter.

The 1945 act removed the exemptions which had been building up through earlier changes, stipulating:

Every insurer (which term for the purposes of this Act shall, in addition to the definition thereof in paragraphs (6) and (7) of section 625.01, Florida Statutes, 1941, also include benevolent mutual benefit associations or societies, fraternal benefit societies, and attorneys doing business under the provisions of Chapter 628, Florida Statutes, 1941), domestic or foreign . . . shall pay the license and premium receipts taxes hereinafter mentioned

The re-enactment of 1945 was the last complete bill passed on this subject. Six more laws were passed during the next 10 years, however, drastically changing the pattern of uniformity established in 1945.

Under the first of these six changes, adopted in 1949, the state returned to a policy of preferential treatment through tax exemption.¹³ All domestic insurers maintaining their home office in

¹⁰Fla. Laws, ch. 19513 (1939).

¹¹Fla. Laws, ch. 20517.

¹²Fla. Laws, ch. 22671.

¹³Fla. Laws, ch. 25344. This chapter also repealed ch. 22749, Acts of 1945. That short-lived act provided for an optional alternative method of computing and paying the premium tax.

Florida were freed from the 2 per cent tax for 1949 and for all subsequent years.

That same year another statute provided for applying a 2 per cent gross premiums tax to non-admitted carriers.¹⁴ Under stipulated circumstances an insurer that has not been admitted to do business in Florida may nevertheless underwrite some Florida risks. Commencing in 1950, the state has collected revenue from such activities.

A new and important tax reduction for certain companies was legalized in 1953.¹⁵ Insurance companies maintaining a regional home office within Florida are given credits for 50 per cent of the state tax and for 100 per cent of the ad valorem tax paid by them on their building and the adjacent land used in connection therewith. The minimum tax owed the state, however, is set at 20 per cent of the amount that would have been due the state without this new reduction. The law carefully stipulates the functions that a regional home office needs to perform (for at least three states) in order to qualify for the tax reduction. This office must also be owned and substantially occupied by the insurance company.

In 1953, the Police Officers' Retirement Fund was created along the lines of the 1939 statute dealing with the Firemen's Relief and Pension Fund.¹⁶ Qualified municipalities are authorized to levy a 1 per cent gross premiums tax on casualty insurance policies covering risks within their city or town limits. As with the firemen's statute, this law provided for allowing credit on the state tax due so that the tax load of the casualty insurance companies was not increased and the state revenue for the general revenue fund from this source was cut in half.

The State Treasurer, as Insurance Commissioner, is also the State Fire Marshal. In 1955 a State Fire Marshal Fund was created to defray the costs of operating the Marshal's office.¹⁷ This fund is financed through a tax of three-eighths of 1 per cent on the gross premiums of all fire insurance. Thus a premium tax is again levied on some domestic companies. The State Fire Marshal is authorized to lower the tax rate if the revenue and reserves are sufficient to meet the costs of the office. Not enough experience under this law has yet been gained to cause any change in the rate which remains at three-eighths of 1 per cent.

The most complicated departure from the principle of uniformity of taxation was also adopted in 1955 when the last regular session of the Legislature enacted a retaliatory statute.¹⁸ If a state charges Florida insurance companies higher taxes, or imposes more onerous regulations upon Florida companies, than the

¹⁴Fla. Laws, ch. 25414 (1949).

¹⁵Fla. Laws, ch. 27989.

¹⁶Fla. Laws, ch. 28230.

¹⁷Fla. Laws, ch. 29860.

¹⁸Fla. Laws, ch. 29680.

general provisions of Florida law set forth, then any insurance company from that state doing business in Florida is required to pay the higher taxes and meet the more stringent requirements (corresponding to the burden which that state imposes on Florida companies) rather than the regular Florida requirements. This is not altogether a reciprocal statute because it works only one way. If another state charges Florida companies less than 2 per cent, companies from that state doing business in Florida must nevertheless pay the full 2 per cent tax.

The retaliatory provisions of the Florida law, however, do not apply to foreign insurance companies if 15 per cent or more of the capital stock of the company is owned by a Florida corporation. A foreign company of the United States may claim any one of three states as its home: the state in which the company has its principal office, the state in which it holds the largest amount of its assets, or the state in which it was admitted to do business. Canadian corporations are invariably deemed to be domiciled in Canada.

During its first year of operation, this retaliatory statute posed many difficult questions of interpretation.¹⁹ The basic problem was whether to consider each of the various aspect of insurance taxation separately or in combination with each other. For example, a state might charge a higher gross premium tax than does Florida, but it might allow extra credits thereby reducing the net tax paid by a Florida company doing business in that state to or below the 2 per cent level. Should a company from such a state be taxed in Florida at the higher rate or not? The answer depends on the exact circumstances of each individual case, but the tendency now appears to be one of allowing full credits and charging on the basis of the effective tax rather than at the gross rate set forth in the law of the other state.

Between 1935 and 1955 the Legislature enacted five bills on workmen's compensation that have a bearing on insurance taxation.²⁰ Rather than review each of these in turn, the final result may be determined from the Florida Statutes, 1955.²¹ The law provides that the Industrial Commission may levy a gross premiums tax on industrial insurance (and its equivalent upon self-insurers) up to 4 per cent. Having been set at 4 per cent for some time, this tax is currently levied at 3 per cent. With respect to insurance taxation the law provides:

¹⁹See Opinions of Attorney General, 055-276 (October 19, 1955); 056-99 (March 27, 1956); and 056-160, S.T. No. 44 (May 24, 1956), which is quoted extensively below; and Advisory Opinions, S.T. No. 12 (April 11, 1956); and supplement to S.T. No. 12 (May 4, 1956).

²⁰Fla. Laws, chs. 17481 (1935), 18413 (1937), 24081 (1947), 28241. (1953), and 29778 (1955).

²¹Section 440.51.

(5) Any amount so assessed against and paid by an insurance carrier shall be allowed as a deduction against the amount of any other tax levied by the state upon the premiums, assessments or deposits for workmen's compensation insurance on contracts or policies of said insurance carrier.

This has been interpreted administratively (rather than by the courts or by the Attorney General) to allow the insurer credit only for the 2 per cent tax on workmen's compensation and the insurer may not deduct the full amount of the tax paid to the Industrial Commission from the tax due the State Treasurer for all types of insurance under the insurance premium law.

In summary, then, the insurance gross premium tax is now as provided in the 1945 re-enactment described above, but with exemptions, deductions, and additions as follows: domestic insurers are freed from all but the Fire Marshal tax. All taxpayers may receive credits for taxes paid to municipalities for the firemen's and policemen's special funds, for workmen's compensation insurance taxes paid, and for maintaining a regional home office in Florida. In addition, all fire insurance companies pay the Fire Marshal tax of three-eighths of 1 per cent, and foreign insurance companies must meet retaliatory tax rates where applicable.²²

This tax coverage is summarized even more briefly in Table 3, where the Florida law is compared with the pattern established in other states. A list of the insurance taxes collected by the State Treasurer is presented in Table 1.

Administrative Provisions

Insurance tax collection is inextricably intertwined with insurance regulation and supervision. Of the various offices within the State Treasurer's Department concerned with tax collection, only the Audit and Control Section of the Insurance Department is devoted primarily to fiscal administration of insurance taxes. The ratio of expenditure made in obtaining this revenue to the revenue itself therefore, cannot be determined without an exhaustive cost analysis. No such analysis of the division of time by the various officials and employees has been made and none seems necessary at the present time.

On a gross basis, disregarding the fact that some non-insurance employees devote some time to the collection of insurance revenue and the fact that most insurance employees devote only a fraction of their time to the collection of money, the cost ratio is obviously low. For three typical years, this gross ratio figure has been calculated as follows:

²²For the current law, see Fla. Stat., 1951, secs. 205.43, 205.431, 205.432, 205.433, 205.44, 205.45, 175.04, 185.08, 440.51, and 626.061.

Year	Total Taxes and Fees	Funds Spent for Operation of Department	Funds Spent As a Percentage of Taxes and Fees
1948	\$3,071,875	\$197,764	6.44%
1950	4,159,142	221,133	5.31
1953	6,537,569	364,500	5.57

The industry not only pays for collection of the tax, but also finances the state's program of regulating the insurance business, leaving close to 95 per cent of every dollar collected for other purposes.

Collection procedure.—Incoming mail for the Insurance Department, including tax payments, is routed through the Revenue Collections Division of the State Treasurer's Department. Monies received are immediately registered on a machine and then listed by the Revenue Collections Division's internal auditor. The items (checks, money orders, or cash) are "billed out" to the proper agency, in this case to the audit control section of the Insurance Department. The Insurance Department acknowledges receipt of the items sent to it and then proceeds to analyze them. This intermediate phase will be described briefly below.

The Insurance Department's Audit Control Section later deposits any items which it has examined with the Revenue Collections Division. If a check, for any reason, must be returned to the sender, the return is routed through the Revenue Collections Division where the amount is deducted from the balance listed for the Insurance Department. Thus both the Revenue Collections Division and the Insurance Department have a continuous, up-to-date record of the amount of money held by the Department. The Collections Division internal auditor reports the Department's end-of-the-day balance every morning so that any discrepancies may be ironed out immediately.

When the Department deposits an item with the Collections Division (i.e., returns an item to the Division), it tells the Division which fund is to be credited with that amount. In most cases this is the General Revenue Fund, but some collections are credited to the State Fire Marshal Fund, the Firemen's Relief and Pension Fund, the Municipal Police Officers' Retirement Fund and the Insurance Agents County License Fund (Trust). The Collections Division credits the proper fund and deposits the item in a commercial bank. (This Division is the intermediary between the commercial banks and all state agencies.)

Within the Insurance Department, the responsible operating officials are notified by the Audit Control Section when items are received. Four offices become involved at this point. The chief auditor has responsibility for insurance company tax returns along with general supervision of company activities (organization and financial status). By far the greatest portion of collections are cleared through this official, including receipts from company

licenses, the 2 per cent premium tax, the 2 per cent premium tax on non-admitted carriers, the non-admitted carriers agents license tax, the fire marshal tax and the two safety officers' funds. The Chief Auditor's office has three men who devote only a fraction of their time to the tax collection aspects of company supervision. Even if the entire expenses of this office were charged against their tax collections, the ratio would be less than one-half of 1 per cent.

The Insurance Department's Audit Control Section clears life insurance agents filing fees and accident and health insurance agents filing fees with one Deputy Insurance Commissioner. Fire and casualty agents, solicitors, and non-resident agents state license tax collections are referred to another Deputy Insurance Commissioner. An assistant to this second deputy is the Supervisor of Qualifications for Adjusters and Bail Bondsmen and he checks the collections from the two sources indicated by his title.

Administrative problems.—By far the most complicated legal requirement has been the retaliatory act. In order to administer this provision of the statutes, the Chief Auditor must be familiar with the laws of the home states of foreign insurers (assuming that Florida companies have actually applied to do business in those states).

The complexity of Table 3, and its inadequacy for administrative purposes, indicate the difficulty of determining simply what are the pertinent laws of other states. Having decided on the correct interpretation of the laws of other states, the problem remains of selecting the proper portions of the foreign statutes to apply. This is illustrated by the following exchange between the Insurance Commissioner, on behalf of his Chief Auditor, and the Attorney General's office. The Chief Auditor needed an official interpretation in order to calculate the tax of a foreign company claiming credits against the retaliatory provisions of Florida's law on the grounds that a Florida company operating in its home state would receive such credits. The Attorney General replied, in part:

On May 4, 1956, presented with the laws of other states and particular factual situations, we advised the Insurance Commissioner that the following credits or deductions set forth in premium receipts tax laws of certain other states should be considered in applying Chapter 29680 [the retaliatory act] to insurers of other states operating in Florida, to the extent and as set forth in such letter, to wit: where the domiciliary state of the foreign insurer provided deduction of losses from premiums received; where such a domiciliary state had a stated reduction in the premium receipts tax for described investments; where such a domiciliary state provided for deduction of first-year premiums. * * * *

Just as under specific factual situations we were called

upon to qualify the statement in our letter of April 11 concerning investments, we now qualify the statement in that letter concerning municipal license taxes. * * * *

(1) We have here statutory or constitutional provisions of other states which specifically provide, in effect, that the state premium receipts tax is in lieu of all other license taxes and prohibiting the imposition of license taxes against insurers by counties, cities and towns. On a comparative basis involving a Florida insurer operating in another state with such . . . provisions and an insurer of that state operating in Florida, in applying the provisions of Chapter 29680 to a company of such other state, such . . . provisions prohibiting imposition of license taxes by counties, cities or towns are tantamount to credits or deductions in computing the Florida premium receipts taxes of an insurer of that other state and license taxes paid by such an insurer to municipalities should be considered. . . .

(2) While we recognize that this question has its controversial aspects, we adhere to the position set forth in our mentioned letter of April 11, 1956, to the effect that agents' licenses paid by a foreign insurer in Florida are not to be considered in applying the provisions of Chapter 29680. This general position is subject to . . . possible qualifications . . .²³

The complexity of this retaliatory statute, and the difficulty which it poses for both the Insurance Department and the Attorney General, suggest the possibility of repeal. The first year, however, was doubtlessly the most difficult. On the basis of the interpretations so far agreed upon by the Attorney General, the Insurance Department, and the foreign insurers (for none have gone to court), future application of this law should be easier. Although the provision was not adopted as a revenue measure, the retaliatory act produced approximately \$185,000 for the state during the fiscal year of 1956. This amount of revenue, added to the original motivating factors behind adoption of the law, practically preclude repeal.

In practice, the Chief Auditor now administers this requirement by placing the responsibility directly on the insurer. The tax return forms issued by the Insurance Commissioner contain the requirement that the insurer calculate his tax both under the Florida law and under the requirements of his home state as imposed upon Florida companies doing business in that state. Having calculated both amounts, the insurer is directed to pay the higher of the two.

Perhaps the next most complicated administrative procedure is the segregation of revenues for the various municipal fire and police officers' funds. Separate forms are provided on which the

²³Opinion of Attorney General, 056-160, S.T. No. 44 (May 24, 1956).

taxpayer lists the total taxable casualty insurance premiums written within each listed municipality (for the Police Officers' Retirement Fund) and the amount of the 1 per cent tax due that municipality's fund. Still another form is utilized for reporting all fire and tornado insurance policy taxable premiums for each listed municipality (for the Firemen's Relief and Pension Fund), again with the amount of the 1 per cent tax due that municipality's fund. Fifty-eight towns are listed on the first form; 86 on the latter. On the master tax return form, then, provision is made for the deduction by the insurance company of the total amount accounted for on the separate forms as tax paid (or payable) for credit to the Police Officers' Retirement Fund or to the Firemen's Relief and Pension Fund.

The administrator's interpretation of the workmen's compensation tax provisions has been noted above. The Insurance Department's tax return form provides space for the deduction of the amount assessed by and paid to the Industrial Commission, except that the maximum credit allowed is 2 per cent of the workmen's compensation premiums. (Thus a company is not allowed to deduct the excess over 2 per cent that is paid to the Industrial Commission for workmen's compensation from the tax owed to the Insurance Commissioner for other types of insurance written by that company.)

The collection of the Fire Marshal tax is an entirely separate operation. The Chief Auditor, for the State Fire Marshal, sends out a tax return form for this single tax of $\frac{3}{8}$ ths of 1 per cent. Unlike the other insurance taxes, this one is levied on domestic as well as foreign companies so the list of taxpayers is somewhat longer. The retaliatory provision applies in the case of this tax as in the case of the others, but without the complications. The tax return form says simply:

Notwithstanding the requirements of the above paragraph, if the percentage of Fire Marshal tax or assessment imposed upon a Florida insurer operating in another state is greater than that provided above, then the Fire Marshal Tax or assessment required of an insurer of said state operating in Florida shall equal the Fire Marshal tax or assessment exacted by such other state of a Florida insurer.

Another separate tax collection procedure is employed for the non-admitted carriers tax. Certain agents are licensed under the Florida Non-Admitted Carriers' Act. The Chief Auditor of the Insurance Department addresses each of these agents annually, providing a tax return form on which all endorsements, renewals, and new policies covered by the tax are listed. The agent lists the policy by company, file number, contract number, and name of assured. He then indicates the gross premium, the returned premiums, and the 2 per cent tax due the state. This information may be checked against the files already available in the Chief Auditor's office.

Collections in Florida

Table 1 shows the revenue derived from insurance taxation in Florida for the fiscal years 1946, 1951, and 1956. This listing shows also, in a general way, how the pattern of taxation has been broadened through the years. Only seven taxes, fees, and licenses were itemized in 1956. Ten years later, with the addition of new revenue statutes and the increasing importance of existing sources (requiring more detailed analysis and reporting by the Comptroller), 18 taxes, fees, and licenses were tabulated. An additional source of revenue is interest on assets of the State Fire Insurance Fund.

TABLE 1.—INSURANCE REVENUES OF THE STATE OF
FLORIDA: 1946, 1951, AND 1956

Source of Revenue	1946	1951	1956
TOTAL REVENUE:			
All sources	\$2,203,612	\$4,599,381	\$8,363,390
All sources except interest	2,136,330	4,533,509	8,257,951
<i>Total taxes</i>	1,870,107	4,101,348	7,500,728
2 per cent insurance premium tax	1,733,585	3,772,033	6,347,782
Agents and solicitors qualification tax	21,975	44,266	56,614
Non-admitted carriers 2 per cent premium tax	.....	11,364	26,804
State fire marshal fund	.....	.....	146,957
Firemen's relief and pension fund	114,547	273,685	393,250
Municipal police officers' retirement fund	.....	.....	529,321
<i>Total fees</i>	4,870	28,213	77,885
Insurance company filing fees	4,870	5,910	8,497
Life insurance agents filing fees	.....	17,435	31,865
Fraternal insurance agents qualification fees	.....	888	753
Agents and solicitors examination fees	.....	.....	14,010
Service representative permit fees	.....	.....	3,150
Adjusters application fees	.....	.....	2,380
Claims investigation registration fees	.....	.....	200
Accident and health insurance agents fund	.....	3,980	17,030
<i>Total licenses</i>	261,353	403,948	679,338
Insurance company license tax	100,765	114,225	147,500
Insurance agents, solicitors, and adjusters license tax	109,224	198,878	364,097
Non-admitted carriers insurance agents license tax	.....	1,375	2,725
Insurance agents county license tax distribution fund	51,364	89,470	165,016
<i>Interest:</i>			
State fire insurance fund	67,282	65,872	105,439

Source: Comptroller's annual reports. The terminology and order here are the same as the 1956 report, except for correction of insurance agents, solicitors, and adjusters license tax.

By far the greatest part of insurance tax revenue has been drawn from the 2 per cent premium tax. For the three years selected for Table 1, the premium tax constituted the following percentages of the total collections (excluding interest):

Year	Per cent
1946	81.1%
1951	82.8
1956	76.9

If all premium taxes (including the tax on non-admitted carriers and the Fire Marshal tax on all fire insurance) were considered, the percentages would be even higher.

Since the 2 per cent premium tax looms so large in insurance taxation in Florida, collections under this tax merit further consideration. Table 2 sets forth the collections both in dollar totals and as a per capita figure for the past 11 years. The Insurance Department's figures are used for this analysis, and the amounts allocated to the Firemen's Relief and Pension Fund and the Police Officers' Retirement Fund are included.

TABLE 2.—TWO PER CENT PREMIUM TAX COLLECTIONS
IN FLORIDA: 1946-1956

Year	Collections (in thousands)	Collections Per Capita
1946	\$1,848	\$.75
1947	2,431	1.00
1948	2,905	1.15
1949	3,265	1.26
1950	3,539	1.33
1951	4,046	1.45
1952	4,551	1.56
1953	5,120	1.65
1954	5,884	1.75
1955	6,120	1.74
1956	7,269	1.97

Source: Report of Insurance Department, State of Florida, For the Fiscal Year Ending June 30, 1955, p. ix; the same, For the Fiscal Year Ending June 30, 1956, p. viii.

Tax collection has risen steadily. The exemption of domestic insurers in 1949 and the credit allowed for regional home offices in 1953 failed to reverse this trend. The per capita collections have gone up about 10 cents each year. In 1956 per capita collections reached a new high of almost \$2.00. This amount, presumably, is actually paid by Floridians rather than by out-of-state land speculators (who may share in the documentary stamp tax payments) or by tourists (who undoubtedly pay large amounts of beverage, racing, and sales taxes).²⁴

The tax savings allowed domestic insurers may only be esti-

²⁴See staff reports to the Florida Citizens Tax Council: Don E. Dickey, *Alcoholic Beverage Taxation in Florida* (1956); Arthur L. Cunkle, *Racing Taxes in Florida* (1957); and LeRoy Qualls, *Sales Taxation in Florida* (1957).

mated. On the basis of the direct writings by these companies in 1955, the tax revenues of the state may be considered as having been reduced by approximately \$1,485,000. By adding to this loss 2 per cent of the tax-free premiums collected by the non-profit Blue Cross and Blue Shield, the total lost revenue became \$1,748,000.²⁵ Actual figures would be slightly below these estimates.

Collections are likewise reduced by the credits allowed foreign insurance companies maintaining a regional office in Florida. This policy has deeper roots than revenue production. Since the passage of the home office act in 1953, four companies have established regional offices in Florida and a fifth has such a building under construction. The approximate value of these five buildings is \$15,446,000. Local ad valorem taxes, which are a credit against state taxes, will be paid on the assessed value of this property. The four companies now operating regional offices in the state have a payroll of approximately \$8,000,000. Against these and related advantages resulting from the location of regional home offices within the state may be placed the total amount of tax credit allowed. For 1955, credits totaling \$352,674 were allowed to four companies, as follows: Prudential Insurance Company, \$265,042; State Farm Mutual Automobile Insurance Company, \$79,893; George Washington Life Insurance Company, \$3,702; and Iowa Home Mutual Casualty Insurance Company, \$4,037.

Insurance tax collections may be examined in the light of total premiums received for Florida business. For three selected years the relationship was as follows:²⁶

Year	Premiums Received (In thousands)	Total Insurance Revenue Collected (In thousands)	Revenue as Per Cent of Premiums	2 Per Cent Premiums Tax (In thousands)	2 Per Cent Tax as Per Cent of Premiums
1946	\$148,601	\$2,136	1.43%	\$1,848	1.24%
1951	290,498	4,534	1.56	4,057	1.40
1955	494,917	6,872	1.38	6,156	1.24

Still another analysis of Florida's insurance tax collections is presented in Table 5, in which the relationships between total

²⁵These figures were calculated as follows:

Direct writings of Florida companies	\$73,982,527	
2 per cent of same		\$1,479,560.54
Annuity considerations of Florida companies	561,439	
1 per cent of same		5,614.39
Total without non-profit health		\$1,485,264.93
Non-profit health, net premiums	13,153,330	
2 per cent of same		263,066.60

Total tax savings (revenue loss) \$1,748,331.53

²⁶Derived from Report of Insurance Department, 1956 and Comptroller's annual reports. Premiums are shown for calendar year; revenues for fiscal years.

collections and population and between total collections and personal income are shown and compared with the pattern in other states.

Insurance Premium Taxation in Other States

Tax laws of other states.—All 48 states and the District of Columbia utilize insurance premium taxes of some sort. A large number of variables are involved in these taxes so that no two taxing bodies have evolved the same base for their tax.

Among the common distinctions made in levying premium taxes are the following: the state in which the insurance company is domiciled; the amounts of returned premiums, dividends paid, and reinsurance ceded or accepted (but not both ceded and accepted); and the amounts of other taxes paid and local assets held. In some states the premium taxes are in lieu of all other or some other possible taxes. Further variables include different rates for different kinds of companies (in terms of organization or type of risks underwritten, or both), the applicability of retaliatory taxes, and the superimposing of a fire marshal tax upon other premium taxes.

The general pattern of premium taxation, according to these shifting elements, is set forth in Table 3. Every state starts with a "gross premium receipts" tax. This tax is generally levied on both foreign and domestic companies in 37 states and the District of Columbia and on foreign insurers only in the remaining 11 states. The most striking exception is Indiana where losses paid in the state are allowed as deductions, leaving virtually a net premium tax. Texas does not tax first-year premiums on many policies. Other states allow deduction of returned premiums, dividends paid, and either reinsurance ceded or accepted, as indicated in Table 3. Florida companies report their gross premiums less return premiums, excluding reinsurance accepted.

The 2 per cent rate for the basic tax is by far the most common found throughout the nation. This rate is employed by 17 states for application to both foreign and domestic companies, by 10 states as the levy placed on foreign companies only (in six of these states domestic companies are not taxed), and by one state as the charge against domestic companies only (this state, South Carolina, charges foreign insurers 3 per cent). Lower rates for domestic companies are found in eight states, and Delaware has a rate of 1.75 per cent for both foreign and domestic insurers. In eight states both foreign and domestic companies pay more than 2 per cent, and in 10 states foreign insurers alone pay more than 2 per cent. Three other states have a sliding scale that defies classification in these terms.

TABLE 3.—STATE INSURANCE PREMIUM TAXATION IN THE UNITED STATES: 1956
(INCLUDES DISTRICT OF COLUMBIA)

State	Coverage					Basic Rate		Off - sets			Exceptions and Special Provisions (Throughout table: D-Domestic Co. F-Foreign Co.)		
	Domestic	Foreign	Less returns	Less dividends	Less reinsurance	Domestic %	Both D & F %	Foreign %	Retaliatory	Lien of some non-property tax		Credit for local assets	Credit for some property tax
Alabama	x	x	..	..	..	%	..	3	..	..	x	x	F fire or marine, 2.5%; other F annuities, 10%. Cities may tax up to 4%, counties may not.
Arizona	x	x	x	x	x	1	..	2	x	x	..	..	.....
Arkansas	..	x	x	..	x	..	..	2½	x	x	..	..	Fire, tornado or marine, 2% workmen's comp. plus up to 3%. No retaliation if 15% of stock owned by Arkansas corp.
California	x	x	x	..	x	..	2.35	..	..	x	..	..	Ocean marine, 5%
Colorado	x	x	x	..	x	..	2	..	x	x	..	..	Except D fraternal, etc. and D mutual fire with 50% assets in local government bonds.
Connecticut	x	x	D	D	D	..	2	..	x	D	..	..	Except D fraternal, 1.75% on life. D surtax, 12% of tax. Plus tax on D interest and dividends.
Delaware	x	x	x	x	x	..	1¼	..	x	..	..	..	Workmen's comp. 4% in lieu all other; fire, plus 3%; some others, plus 2%.
D. of C. Florida	x	x	x	x	x	..	2	..	..	x	..	x	 Annuities, 1%. Credits for regional home office. No retaliation if 15% owned by Florida corp.
Georgia	x	x	x	..	..	..	2¼	..	..	..	x	..	Workmen's comp. separately taxed up to 4%. All fire, plus % fire marshal tax. Except fraternal and farmers mutuals in 1-4 counties.

TABLE 3.—STATE INSURANCE PREMIUM TAXATION IN THE UNITED STATES: 1956 (Continued)

State	Coverage			Basic Rate		Off - sets		Exceptions and Special Provisions (Throughout table: D-Domestic Co. F-Foreign Co.)
	Domestic	Foreign	Less returns Less dividends Less reinsurance	Domestic %	Both D & F %	Foreign %	Lien of some non-property tax Credit for local assets Credit for some property tax	
Idaho	x	x	x	..	3	..	x	Except fraternal. Credit for local fire department taxes.
Illinois	..	x	x	..	..	2	x	All fire, plus ½%. Deductions include losses paid in state.
Indiana	..	x	x	..	..	3	..	Except fraternal, county mutual, nonprofit hospital and medical service.
Iowa	x	x	x	..	2	..	..	Fire and lightning in cities or townships, plus 2%; all fire, plus ¾%.
Kansas	..	x	..	..	..	2	..	Plus all stock cos. and all workmen's comp., except fraternal life. D life pay on capital stock. Fire plus .75%.
Kentucky	..	x	x	..	..	2	..	Both D and F rates vary. Fire plus 1%, F fire plus additional 2% for cities.
Louisiana	x	x	..	..	1-3	..	x	Fire plus ¾%.
Maine	x	x	x	1	..	2	D	Except nonprofit hospital service fraternal, and D mutual fire. Annuities, 1%. Credit for D franchise and home office.
Maryland	x	x	x	..	2	..	..	Several bases other than gross premium. Marine or fire and marine, 5%.
Mass.	x	x	..	..	2	..	..	

TABLE 3.—STATE INSURANCE PREMIUM TAXATION IN THE UNITED STATES: 1956 (Continued)

State	Coverage				Basic Rate		Off - sets			Exceptions and Special Provisions (Throughout table: D-Domestic Co. F-Foreign Co.)			
	Domestic	Foreign	Less returns	Less dividends	Less reinsurance	Domestic %	Both D & F %	Foreign %	Retaliatory		Lien of some non-property tax	Credit for local assets	Credit for some property tax
Michigan	"	x	x	"	"	"	"	2	x	x	"	"	Life and casualty, 2%; fire, marine, and automobile, 3%. D co. pays fee of ⅓% on capital and surplus with limits of 10 minimum, \$50,000 maximum. Marine, 5% of underwriting profit; fire, plus ⅓%. F annuities, 2%, D annuities, 1%; surtax, 14% from 1955-1958.
Minnesota	x	x	x	"	"	1½	2	"	x	"	"	D	Exemption of returns and dividends varies.
Mississippi	x	x	x	"	"	"	"	"	"	"	"	"	Minimum tax, \$125. Fire, plus ⅓%.
Missouri	x	x	x	x	"	"	2	"	F	"	"	"	Except fractionals. Mutuals deduct returns; D fire
Montana	x	x	"	"	"	"	2	x	"	"	"	"	mutuals deduct reinsurance. D mutual fire, plus ⅓%.
Nebraska	x	x	"	"	"	.4	"	2	x	"	"	"	Except lodge-system fraternal. Total insurance treated separately. Licenses taxes deductible.
Nevada	x	x	x	"	x	"	2	"	"	"	"	"	Only fire, marine, fidelity and casualty cos., except certain mutuals, and all life insurance cos. listed.
New Hamp.	x	x	"	x	"	"	2	"	"	"	"	"	Ocean marine, 5% of underwriting profits.
New Jersey	x	x	x	x	x	"	2	"	"	"	"	x	Except fraternal. Life companies pay only on 12% of total premiums. Annuities, 1%. Credit for franchise and property taxes paid, within limits.
New Mexico	x	x	x	x	x	"	2	"	"	"	"	"	Marine, 5% of underwriting profit. Franchise tax has various bases.

Life and casualty, 2%; fire, marine, and automobile, 3%. D co. pays fee of ⅓% on capital and surplus with limits of 10 minimum, \$50,000 maximum. Marine, 5% of underwriting profit; fire, plus ⅓%. F annuities, 2%; D annuities, 1%; surtax, 14% from 1955-1958. Exemption of returns and dividends varies. Minimum tax, \$125. Fire, plus ⅓%. Except fractionals. Mutuals deduct returns; D fire mutuals deduct reinsurance. D mutual fire, plus ⅓%; other fire, plus ⅓%. Except lodge-system fraternal. Tital insurance treated separately. Licenses taxes deductible. Only fire, marine, fidelity and casualty cos., except certain mutuals, and all life insurance cos. listed. Ocean marine, 5% of underwriting profits. Except fraternal. Life companies pay only on 12½% of total premiums. Annuities, 1%. Credit for franchise and property taxes paid, within limits. Marine, 5% of underwriting profit. Franchise tax has various bases.

TABLE 3.—STATE INSURANCE PREMIUM TAXATION IN THE UNITED STATES: 1956 (Continued)

State	Coverage				Basic Rate		Off - sets			Exceptions and Special Provisions (Throughout table: D-Domestic Co. F-Foreign Co.)
	Domestic	Foreign	Less returns	Less dividends	Less reinsurance	Domestic %	Both D & F %	Foreign %	Retaliatory	
New York Tax Law	x	x	x	x	x	"	¾-2	"	"	Not all D and F cos. are taxed. D insurance and F life pay under tax law only. Several exemptions listed. Credit for some taxes including Buffalo and N.Y.C. (See N.Y. insurance law, below.)
Insurance Law	x	x	"	"	"	"	1-5	"	x	Not all D and F cos. are taxed. D marine, F fire F mutual fire, F marine, alien life, alien casualty or surety, and Public Vehicle Liability Security Fund cos. pay only under insurance law. F casualty or surety, alien fire, and alien marine pay under both laws. Exemptions listed. Retaliatory tax allows credit for taxes paid under the law. Except farmers mutuals fire and fraternal, F workmen's comp., 4%; D same, 1.6%; D life, 1.5%; fire, plus ½%.
No. Carolina	x	x	"	"	"	1	"	2½ x	x	Except D stock and mutual. D fire, except county mutual, plus ½%.
No. Dakota	x	x	"	"	"	"	2½	"	x	D pay .2% of capital and surplus or of 8 1/3 times gross premiums. Fire, plus ¾%.
Ohio	"	x	x	"	x	"	"	2½ x	"	Except farmers unions and farmers mutual fire. Fire, plus 5/16%.
Oklahoma	"	x	x	x	"	"	"	4 x	x	

TABLE 3.—STATE INSURANCE PREMIUM TAXATION IN THE UNITED STATES: 1956 (Continued)

State	Coverage			Basic Rate		Off - sets		Exceptions and Special Provisions (Throughout table: D-Domestic Co. F-Foreign Co.)					
	Domestic	Foreign	Less returns	Less dividends	Less reinsurance	Domestic %	Both D & F %		Foreign %	Retaliatory	Lien of some non-property tax	Credit for local assets	Credit for some property tax
Oregon	..	x	x	x	x	x	..	2½	x	x	..	..	F and alien marine, 5% of underwriting profit; fire, plus ⅔%.
Penn.	..	x	x	..	x	..	..	2	x	..	..	..	Marine, 5% of underwriting profit. Some additional deductions.
Rhode Island	x	x	x	..	x	..	2	..	x	..	..	..	Except fraternal. Marine, 5% of underwriting profit.
So. Carolina	x	x	x	x	..	2	..	3	x	..	x	..	Except fraternal. F fire, plus 1% and plus .1%. Limit on D cos. of 5% of net income. Cities may levy additional license taxes.
So. Dakota	x	x	x	x	x	½	..	2½	x	x	..	..	Except county and township mutuals and fraternal. F annuity, 1½%; fire, plus ⅔%.
Tennessee	x	x	..	..	..	..	2	..	..	x	..	..	Fire, plus ½%; annuity, 1½%; workmen's comp. and self-insurers, 4%. Some credits for local assets.
Texas	x	x	x	x	x	..	3.85	..	..	x	x	..	Except fraternal. Life, health, and accident pay on renewals only. Some lower rates. F life, health, and accident, 3.3%. Some additional taxes.
Utah	x	x	x	x	x	..	2¼	..	x	x	..	x	Except D or cooperative benefit assns. Ocean marine, 5% of underwriting profit.
Vermont	x	x	x	x	x	..	2	..	x	..	..	..	Fire, plus ⅓%.
Virginia	x	x	x	..	x	..	2¼	..	x	x	..	..	D mutual, industrial sick benefit, 1%; workmen's comp., 2½%. Administrative tax, .1%.

TABLE 3.—STATE INSURANCE PREMIUM TAXATION IN THE UNITED STATES: 1956 (Continued)

State	Coverage			Basic Rate		Off - sets		Exceptions and Special Provisions (Throughout table: D-Domestic Co. F-Foreign Co.)					
	Domestic	Foreign	Less returns	Less dividends	Less reinsurance	Domestic %	Both D & F %		Foreign %	Retaliatory	Lien of some non-property tax	Credit for local assets	Credit for some property tax
Washington	x	x	x	"	"	1	"	2	x	x	"	"	Except title insurers and fraternal. Some D, 2%; ocean marine and foreign trade, % of underwriting profit.
West. Va.	x	x	"	"	"	"	2	"	"	"	"	"	Except farmers mutual, annuity, and fraternal. Fire, plus $\frac{1}{2}\%$.
Wisconsin	x	x	"	"	"	"	%-2%	"	"	"	"	"	Separate rates and bases for different kinds of insurance companies. Limited reciprocity.
Wyoming	x	x	x	x	"	"	2½	"	"	x	"	"	Annuity, 1%; companies not authorized to do business in state, 5%.

Source: Commerce Clearing House, *State Tax Guide* (looseleaf, revised to Nov. 13, 1956).

Off-sets, or credits, allowed in Florida are severely limited, but under some circumstances an insurance company may benefit from holding local assets. That is, the state tax may be reduced according to the property tax the company pays on its regional home office building and adjacent land. Florida's 2 per cent premium tax is not considered a blanket levy in lieu of other taxes, licenses, or fees, all of which are charged both by the state and its local governments. In other states, varying degrees of credit are allowed under these headings. The premium tax is levied in lieu of at least some non-property taxes in 26 states. Nine states, including Florida, allow some credit for local assets. Five states, including Florida, give a rebate under some circumstances for the payment of property taxes.

This summary of Table 3 is recapitulated in Table 4. The exceptions and special provisions, however, virtually preclude the possibility of precise classification and tabulation. Only the fire marshal tax may be lifted out of this conflicting mass of detail. Nineteen states levy a fire marshal tax or some similar tax on fire insurance premiums only. Of the 19, all but five rely on a one-half of 1 per cent tax, two charge less (Oklahoma's five-sixteenths of 1 per cent being below Florida's three-eighths of 1 per cent), and three impose a higher rate.

TABLE 4.—NUMBER OF STATES LEVYING INSURANCE PREMIUM TAXES, ACCORDING TO TAX BASES AND RATES: 1956
(INCLUDES DISTRICT OF COLUMBIA)

Tax Basis and Tax Rate	Total	Type of Company		
		Domestic only	Foreign only	Both domestic and foreign
Gross premiums (in general)	49	.....	11	38
Reduction of basic coverage				
Gross premiums less returns	40	1	11a	28
Gross premiums less dividends	25	1	5a	19
Gross premiums less reinsurance	27	1	7a	19
Basic rate, per cent				
0.4% - 1.75%	9	8	.....	1
2%	28	1	10b	17
2.25% - 4.0%	18	.....	10c	8
Varies within state	3	.....	.....	3
Retaliatory	32	.....	32	.....
Off-sets				
Lieu of some non-property tax	26	2	1	23
Credit for local assets	9	1	2a	6
Credit for some property tax	5	1	1a	3

Source: Commerce Clearing House, *State Tax Guide* (looseleaf, revised to Nov. 13, 1956).

- a. Foreign companies only, because domestic companies are not taxed.
- b. In six of these states, domestic companies are not taxed.
- c. In five of these states, domestic companies are not taxed.

This analysis of the laws of other states points to a great bulk of varying details. Even so, however, the presentation above is adequate only as a general, over-all picture. Administrators, insurance company attorneys, and accountants, need a more precise account of foreign tax laws in order meet the diverse requirements of 49 taxing authorities within the United States.

Relative collections in other states.—Florida's insurance tax collections as related to population and personal income are very close to the national average. The national, regional, and state collections for the highest and lowest states are set forth in Table 5.

TABLE 5.—STATE INSURANCE TAX COLLECTIONS IN THE UNITED STATES: 1956

Jurisdiction	Insurance Tax Collections (In thou- sands)	Collections Per Capita	Collections Per \$1000 of Personal Income
United States	\$426,178	\$2.61	\$1.41
Highest state per capita (Connecticut)	11,036	4.92	2.01
Highest state per income (Oklahoma)	7,897	3.64	2.37
Low state per capita (West Virginia)	3,350	1.67	1.31
Low state per income (Indiana)	8,284	1.91	1.01
Florida	8,243	2.24	1.39
Southeast (excluding Florida)	54,865	2.17	1.71
High per capita (Virginia)	9,728	2.72	1.77
High per income (Mississippi)	4,099	1.94	2.03
Low per capita (Kentucky)	5,401	1.80	1.45
Low per income (Kentucky)	5,401	1.80	1.45
Southwest	45,669	2.65	1.76
New England	32,752	3.29	1.63
Middle East	105,322	2.79	1.35
Middle Central	107,047	2.46	1.23
Northwest	21,516	2.43	1.49
Pacific Coast	50,764	2.94	2.01

Source: Bureau of the Census, *Detail of State Tax Collections in 1956*. Figures include premium taxes and licenses.

Florida's general conformity to the national pattern is further evidenced by its standing at close to the modal point in a class analysis of per capita and per dollar of personal income collections. Table 6 reveals this breakdown.

This comparison of Florida's insurance taxation with that of other states reveals nothing dramatic. The absence of any suggestions for drastic change in the conclusion below stems in large measure from the compatibility between the practice in Florida with that throughout the rest of the nation.

TABLE 6.—DISTRIBUTION OF STATES ACCORDING TO CLASSIFICATIONS OF INSURANCE TAX BURDENS: 1956

Classes of Per Capita Tax Collections	Number of States	Classes of Tax Collections Per \$1,000 of Personal Income	Number of States
\$1.50 - \$1.75	2	\$1.01 - \$1.20	7
1.76 - 2.00	7	1.21 - 1.40	12
2.01 - 2.25	10	(Florida 1.39)	13
(Florida 2.24)		1.41 - 1.60	
2.26 - 2.50	10	1.61 - 1.80	10
2.51 - 2.75	8	1.81 - 2.00	2
2.76 - 3.00	4	2.01 - 2.20	3
3.01 - 4.00	5	2.21 - 2.40	1
4.01 - 5.00	2		
Total	48	Total	48

Source: Derived from Table 5.

Suggestions for Change

No major revisions called for.—On the basis of the examination of insurance taxes in this and other states, major revision of Florida's taxes does not seem necessary. As compared with other states, Florida's taxation program appears to be about in line with respect to rates. Insurance tax laws of this state are more simple and straightforward than those of most states (certainly more easily understood, for example, than the complicated conglomeration of tax laws and insurance laws applied by the state of New York).

Possibilities for minor reform.—Some improvements might, nevertheless, be effected. Perhaps the following points will suggest changes that would improve the present practice.

The insurance company license tax is now established at \$200 for all insurers. This may have been appropriate in 1913 when the tax was originally levied or in 1945 when it was last reenacted, but the tax might need adjustment today. Is this uniformity desirable? Might not some types of companies be required to pay a higher tax while others are given a lower rate? Certainly the companies themselves differ widely both as to organization and type of underwriting as well as with respect to volume of business.

The complete exemption of domestic insurers from all but the fire marshal tax, and the credits allowed foreign companies for maintaining regional home offices in Florida, are both beyond the scope of revenue considerations. These exemptions and credits should be justified frequently (perhaps every four years). As long as the state gets its money's worth (i.e. advantages corresponding to the lost tax revenue), these two policies should be continued, but they should not be considered an inherent right of the companies involved.

Another policy which goes beyond revenue considerations is the retaliatory practice. In 1956, Florida collected about \$185,000 in retaliatory taxes. This represents approximately six one-hun-

dredths of 1 per cent of the taxable premiums written in Florida. From a strictly revenue point of view, then, the state could raise the additional money by levying a tax of 2.06 per cent and at the same time avoid completely all of the administrative complications presented by the retaliatory law. Clearly, then, the retaliatory requirement must be justified by other reasons. An agreement by the 32 states now following a policy of retaliation to abandon the practice might well do away with all retaliatory laws. Florida might initiate such action through the Council of State Governments or one of the more specialized inter-state organizations. The Congress of the United States, under the decision in the *Southeastern Underwriters Case*,²⁷ could legislate on this subject, but Congressional interference at this juncture would generally be regarded as an undesirable reversal of its policy of permitting the states to control the insurance business.

The relationships between fire and tornado insurance and the Firemen's Relief and Pension Fund, and between casualty insurance and the Police Officers' Retirement Fund are not entirely logical. People who pay these insurance premiums (and thereby the tax) are certainly concerned with the maintenance of effective public safety forces, but so are the un-insured and the self-insured. Public safety, in fact, is probably the oldest governmental function existant and it has long been regarded as a burden to be shared by the entire community. The financial status of the Firemen's Fund should not depend upon a tax source that is reduced when the firemen do a better job. Although police work and casualty insurance rates (and premium tax receipts) are not as immediately related, the same point may be made for the Police Officers' Fund. To the extent that these funds are considered desirable, they should be adequately financed. On the other hand, if the 1 per cent levy produced a superabundance, the extra money should not go towards providing a super-luxurious relief and pension program. At the present time the danger of providing too much money for these funds is remote. The responsibility of maintaining adequate revenue without unjustifiable excesses, however, is one that the Legislature and the local governing boards should not shirk. The automatic workings of the present laws may simplify the legislative process in that the lawmakers are not called upon to pass judgment on the revenues available, but like other autonomous funds they represent an abdication of legislative authority and budgetary control.

The observations regarding the Firemen's Fund would seem to apply with equal force to the Fire Marshal Fund, except that in the case of the Fire Marshal Fund only the Legislature (and not any local authority) is concerned. The resignation of legislative control here has reached the point where the Fire Marshal is

²⁷*U. S. v. Southeastern Underwriters Association*, 322 U.S. 533, 88 L. ed. 1440 (1944.)

permitted to revise the tax rate downward, if he wants to have less money for his operations. The Legislature, under existing law, has decided to ignore the justification of the "wants" of the Fire Marshal, be they too pecunious to get the job done or be they too munificent to accord with efficiency and economy.

As was noted above, the precise meaning of the provisions relating to the credits allowed workmen's compensation insurers is subject to some doubt. Paragraph (5) of Section 440.51, Florida Statutes, 1955, is quoted above. A brief amendment clarifying paragraph (5) would be helpful, although the disagreement over the meaning of this paragraph has so far been slight. If for some other reason that section of the statutes is re-written, paragraph (5) should then be clarified.

Summary

Summary of analysis.—The State of Florida collects taxes, fees, and licenses from the insurance business within the state from 18 separate levies. The yield from all of these was \$8.4 million in 1956. By far the most important of the levies is the 2 per cent gross premium receipts tax which by itself produced \$6.3 million the same year.

The premium tax is levied on gross premiums, omitting premiums for reinsurance accepted and less return premiums. Annuity considerations are taxed at 1 per cent. Domestic insurance companies in Florida and 10 other states are not taxed on their premiums. Foreign insurers maintaining regional home offices in this state receive important deductions. The tax savings of domestic insurers amounted to about \$1,485,000 in 1955, while regional home offices that year saved four companies a total of almost \$353,000 in state taxes. Non-admitted carriers, on the other hand, are taxed at the full 2 per cent.

Tied in with the 2 per cent premium tax are the Firemen's Relief and Pension Fund and the Police Officers' Retirement Fund. The law allows qualified municipalities to levy a 1 per cent tax on fire, tornado, and casualty insurance premiums to finance these funds, and the taxes paid under this provision are deducted from the tax owed the state.

An additional premium tax of three-eighths of 1 per cent (or less) is levied on both domestic and foreign fire insurance companies to defray the expenses of the State Fire Marshal. As with the safety officers' funds, this is an earmarked fund currently allowed to operate beyond the reach of the Legislature.

Workmen's compensation insurance premiums are taxed by the Industrial Commission at 3 per cent under a law which authorizes a levy up to 4 per cent. As long as this rate remains above 2 per cent the companies pay no tax to the Insurance Commissioner on their workmen's compensation premiums.

Despite the provisions outlined above, foreign insurance companies are subject to higher taxes and more onerous regulations whenever the state in which they are domiciled exacts higher taxes or imposes more onerous regulations upon Florida companies actually applying to do business in that state. This is a retaliatory law, imposing the higher rates on foreign companies, and it does not allow any reduction of the Florida tax by companies from states with lower rates. This is a new provision of Florida law and obviously difficult to administer, especially when first applied.

In 1955, the last year for which insurance company reports are available, total insurance revenue for Florida amounted to \$6,872,000, of which \$6,156,000 was collected under the 2 per cent premium tax. The total revenue represented 1.38 per cent of the premiums actually received by companies on their Florida business; and collections under the 2 per cent gross premiums tax were 1.24 per cent of the premiums covering Florida risks. The 2 per cent tax did not produce a revenue equal to 2 per cent of the total premiums because of the above noted exemptions and deductions allowed insurance companies.

As compared with other states, Florida's pattern of insurance taxation and the rates charged are standard. The premium tax is set at 2 per cent for domestic companies in one state, for foreign companies in 10 states (including Florida), and for both domestic and foreign companies in 17 states. Basic rates of the gross premiums tax on foreign companies were below Florida's 2 per cent rate in one state and above Florida's rate in 18 states. Retaliatory provisions appear in Florida and 31 other states.

Nearly half the states in 1956 collected between \$2.00 and \$2.50 per capita for insurance taxes. Florida was in the middle of this group with a per capita figure of \$2.24. Use of personal income as the basis for comparison produced a similar result. Over half of the states collected between \$1.20 and \$1.60 per \$1,000 of personal income. Florida received \$1.39 for the same amount of personal income.

Summary of suggestions.—(1) No major revision of Florida insurance law or of Florida's rate structure seems desirable.

(2) The flat-rate insurance company license tax of \$200 should be re-examined for both upward and downward revision, depending on the companies involved.

(3) The complete exemption of domestic insurers from the 2 per cent premium tax and the large deductions allowed foreign companies with regional home offices should not be considered a matter of inherent right for the companies involved. These benefits should be re-examined periodically in order to determine if they are still desirable.

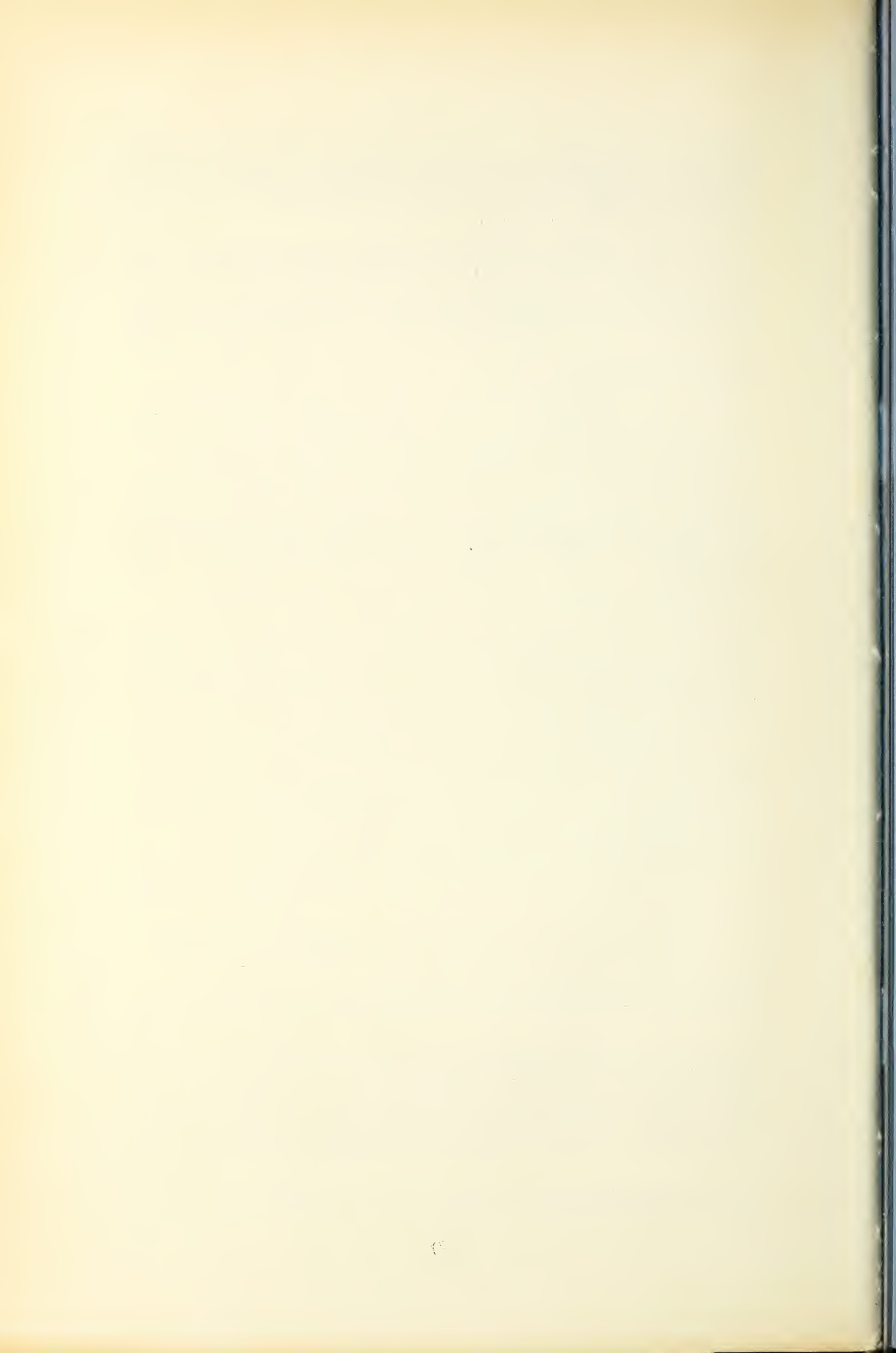
(4) The retaliatory statute should not be maintained purely as a revenue measure. As an aspect of interstate insurance regu-

lation this law might be considered a proper subject for negotiation and agreement between the various states applying the retaliatory principle. In the meantime considerations other than revenue may justify the law.

(5) The Firemen's Relief and Pension Fund, the Police Officers' Retirement Fund, and the State Fire Marshal Fund are all worthy programs. The Legislature should divorce them from their present autonomous financing measures and appropriate for them according to need, assuring that they get enough, but not too much, money to execute adequately the functions they are designed to perform.

(6) If section 440.51, Florida Statutes, 1955, is rewritten for any reason, paragraph (5) should be clarified. This is not such a pressing problem as to justify special individual attention.

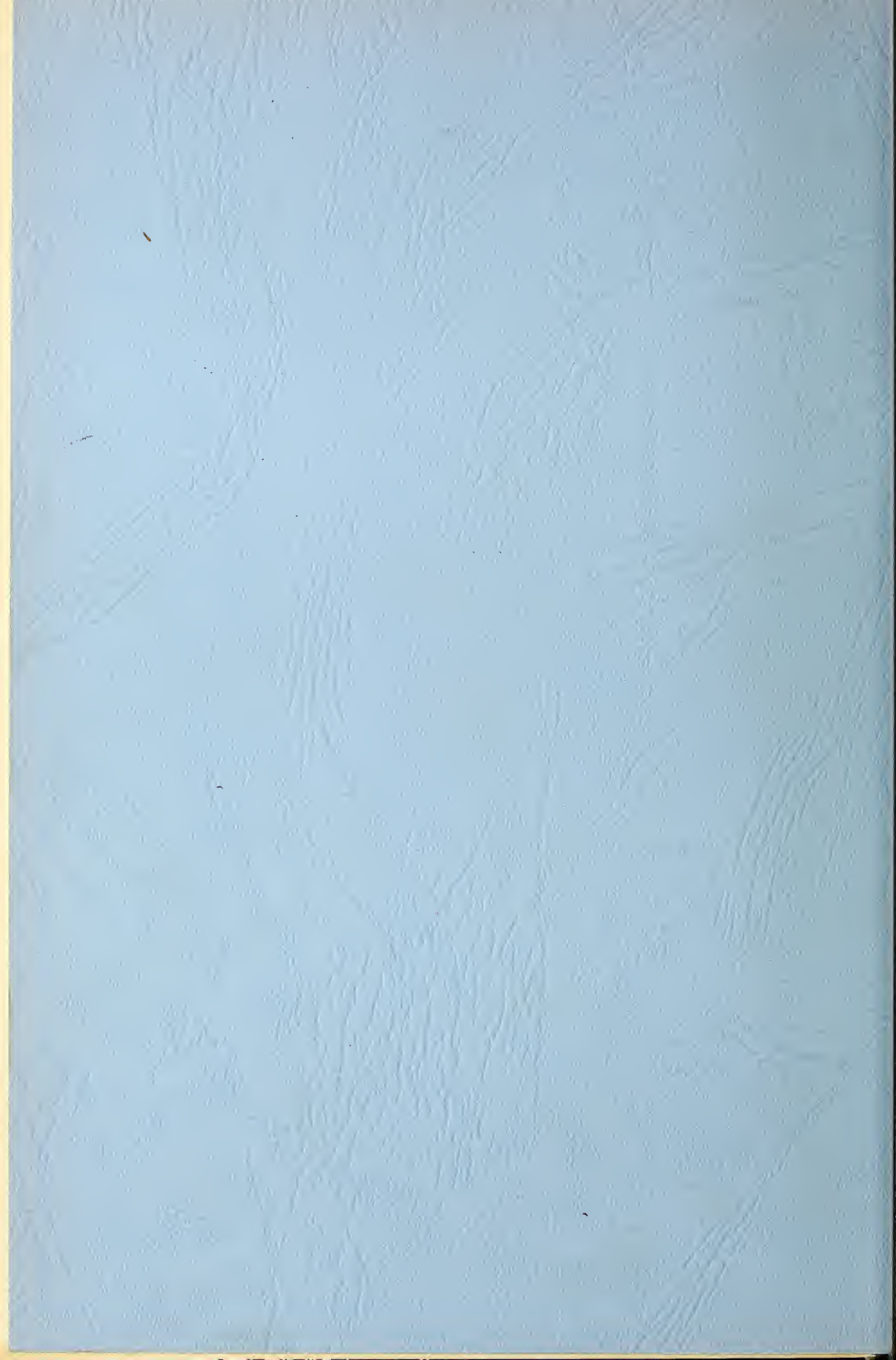
Insurance taxes in Florida as a group were the ninth most important source of revenue for the state in 1956. The pattern of taxation conforms generally to that which prevails throughout the nation, with Florida's tax an improvement over that in many other states. To rock this boat at the present time appears unnecessary.



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